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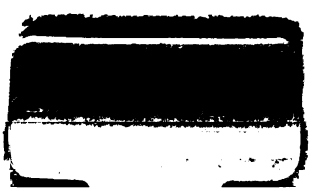

AMERICAN GOVERNMENT

The Co.

THE CAPITOL AT WASHINGTON — EAST FRONT.

AMERICAN GOVERNMENT

A TEXT-BOOK

FOR SECONDARY SCHOOLS

BY

ROSCOE LEWIS ASHLEY

AUTHOR OF "THE AMERICAN FEDERAL STATE"

ILLUSTRATED

UNIV. OF CALIFORNIA

New York

THE MACMILLAN COMPANY

LONDON: MACMILLAN & CO., LTD.

1903

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Set up, electrotyped, and published June, 1903.

Norwood Press
J. S. Cushing & Co. — Berwick & Smith Co.
Norwood, Mass., U.S.A.

PREFACE

In most secondary schools the time devoted to the study of American government is so limited that especial care is necessary in selecting the topics to be considered and the methods to be used. The chief aim in studying our governments is unquestionably the preparation of our high school students for the proper exercise of their duties and privileges as American citizens. This cannot be done simply by memorizing sections of the most practical book in existence, undeniably useful as recitations from a good text-book may be. In the opinion of the author, this preparation must include at least three things. First of all, the pupils must gain an adequate knowledge of the structure and functions of our system of government. In the second place, they should be to some extent familiar with the affairs of to-day which are connected with the work of government, in order that our political system may become real, and not be a lifeless organization to be studied chiefly in books. Last, but perhaps most important from the standpoint of life as well as the school, some training must be given which will enable the pupils to look upon both sides of public questions, to weigh arguments, and to judge for themselves whether reasons given for a particular policy may be satisfactory. This training of the judgment in connection with practical subjects must never lead the pupils to imagine that they are solving or can solve the problems of government, but should enable them to learn and understand the truth about each one which they consider.

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It is the author's hope that this little book may be found useful in many classes as a manual from which a fairly definite idea of the character and work of our governments may be obtained, with suggestions and material for the further study of particular topics and the practical side of American government as it is to-day. In writing the book he has made use of much the same material as in similar chapters of his *American Federal State*, supplementing those authorities with many that have appeared within the last two years, especially in periodical literature. From that work he has borrowed freely, without the use of quotation marks, for several sections of the text and for references and questions given at the end of the chapters.

It gives him great pleasure to acknowledge the many helpful suggestions offered by Mr. George L. Fox, The University School, New Haven, Connecticut; Dr. Rockwell D. Hunt, High School, San Jose, California; Mr. Frederick H. Clark, Lowell High School, San Francisco, California; Mrs. Theodore Coleman, Throop Polytechnic Institute, Pasadena, California, and Miss Ethel Coblentz, High School, Pasadena, California. Corrections of errors will be gladly received from those who have occasion to use the volume.

LOS ANGELES, CALIFORNIA,
May, 1903.

SUGGESTIONS

MANY teachers may prefer to study the parts of the book in an order different from that in which they are now arranged. Although the author advises that the present arrangement be followed, little difficulty will probably be found in taking the chapters upon state government before those upon local government. In fact, the study of Part II may precede that of Part I, though it is undoubtedly more difficult. The author has found it advisable to make a careful examination of the Constitution of the United States in connection with the work of the Constitutional Convention, Chapter XVIII. The pupils can then distinguish much more easily between the constitutional and the extra-constitutional features of our national government. This distinction ought to be understood on all important subjects, but should not be over-emphasized.

When classes devote a year to American history and government, all authorities agree that the two should be correlated as far as possible. Under ordinary conditions, however, the major part of the work in civics would naturally follow the regular course in history. It will therefore be necessary to study the text-book on government as a whole after the historical discussions have been completed. In this part of the class work the historical facts can be reviewed to advantage, and at the same time used to illustrate the topics of the text. Such a correlation of the two subjects will make both of them more vital and interesting.

As stated in the preface, no course in American government can be satisfactory which does not give opportunities

to investigate the actual work of government in its many practical phases. For this investigation, many of the "Practical Questions" at the ends of the chapters can probably be used to advantage. Every pupil ought to do some additional outside work every month, in order to gain skill in discriminating between important and unimportant facts, in making notes, and in formulating reports. With this end in view, the references under the head of "Studies" have been carefully selected from books and magazines that are easily accessible. It will probably be possible also for each pupil to prepare a more formal paper upon one of the "Topics."

Much can be done in the class room in studying constitutions, charters, sample ballots, and other papers almost as useful which can be obtained at but slight expense. Interest may be quickened by holding a legislative session, at which bills are presented, debated, and brought to a vote. Trials with a judge, jury, attorneys, and witnesses may be possible by a little extra preparation and help from outside if necessary.

The following suggestions may be given for the school library. This should have several copies of the state constitution and of the city charter, if the school is located in a city. A recent copy of the *Congressional Directory* and some good newspaper almanac for the current year are essential. On account of the similarity in the treatment within chapters and the additional bibliographies in the larger book, the author's *American Federal State* may be found especially useful for reference. No library should be without Hinsdale's *The American Government*, nor Bryce's *The American Commonwealth*, abridged edition. Some good text-book upon the governments of the State in which the class resides is almost indispensable. Those recently published in Macmillan's *Hand-books of American Government* series are excellent. In fact, if there is no text-book of this character, the author would suggest that

a copy of Morey's *The Government of New York* be purchased, unless the institutions of the State are much more like those described in one of the other volumes of that series. Among the many other books that might be mentioned, Schouler's *Constitutional Studies*, Harrison's *This Country of Ours*, and Wilson's *The State* are particularly recommended. If the classes are at all large, several copies of some of these books may be necessary.

For other suggestions upon methods and material, the author may, perhaps, be permitted to refer to those made in his *American Federal State*, bearing in mind that some of the suggestions are intended for advanced students, and that many of the books named are almost exclusively historical.

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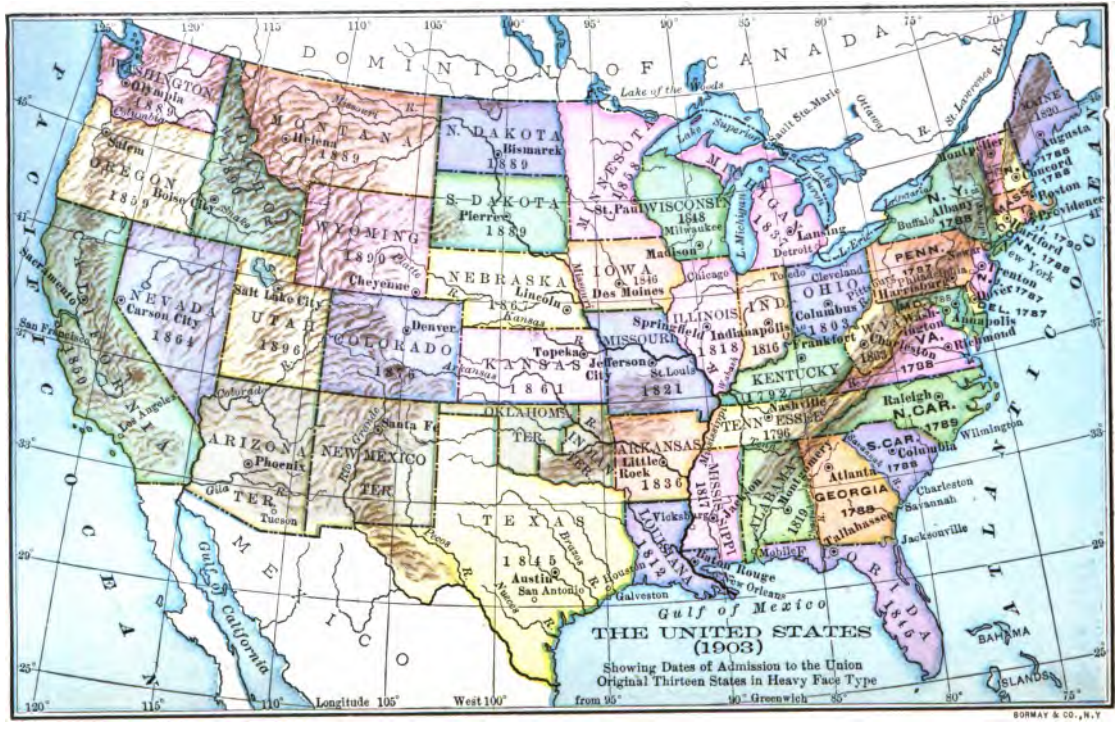
AMERICAN GOVERNMENT


THE UNITED STATES
(1903)
Showing Dates of Admission to the Union
Original Thirteen States in Heavy Face Type
DOMINION OF CANADA
PACIFIC OCEAN
ATLANTIC OCEAN
MEXICO
Gulf of Mexico
Gulf of California
Lake of the Woods
Lake Superior
Lake Huron
Lake Michigan
Lake Erie
Lake Ontario
Ottawa R.
St. Lawrence R.
Missouri R.
Platte R.
Kansas R.
Arkansas R.
Colorado R.
Gila R.
Pecos R.
Brazos R.
Nueces R.
Mississippi R.
Tennessee R.
Cumberland R.
Ohio R.
Wabash R.
Rio Grande R.
Sacramento R.
San Francisco
Los Angeles
Salt Lake City
Denver
Santa Fe
Phoenix
Tucson
Austin
San Antonio
Houston
Galveston
Vicksburg
Baton Rouge
New Orleans
Mobile
Jackson
Montgomery
Atlanta
Tallahassee
Savannah
Charleston
Jacksonville
Columbia
Raleigh
Wilmington
Richmond
Annapolis
Dover
Trenton
Harrisburg
Philadelphia
Pittsburg
Buffalo
Albany
Montpelier
Augusta
Concord
Boston
Providence
Hartford
New York
Newark
Dover
Charleston
Frankfort
Columbus
Indianapolis
Springfield
Chicago
Detroit
Lansing
Toledo
Cleveland
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Milwaukee
St. Paul
Des Moines
Lincoln
Topeka
Jefferson City
St. Louis
Little Rock
Nashville
Baton Rouge
Lake Superior
Sault Ste. Marie
Olympia
Salem
Boise City
Helena
Bismarck
Pierre
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Houston
Austin
Pierre
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Helena
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Los Angeles
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CALIFORNIA
1850
NEVADA
1864
UTAH
1896
COLORADO
1876
ARIZONA
TER.
NEW MEXICO
TER.
WYOMING
1890
MONTANA
1889
N. DAKOTA
1889
S. DAKOTA
1889
NEBRASKA
1867
KANSAS
1861
OKLAHOMA
TER.
INDIAN
TER.
TEXAS
1845
MINNESOTA
1858
IOWA
1846
MISSOURI
1821
ARKANSAS
1836
LOUISIANA
1812
MISSISSIPPI
1817
ILLINOIS
1818
WISCONSIN
1848
MICHIGAN
1837
INDIANA
1816
KENTUCKY
1792
TENNESSEE
1796
ALABAMA
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GEORGIA
1788
FLORIDA
1845
S. CAR.
1788
N. CAR.
1789
VA.
1788
W. VA.
1863
MD.
1788
DEL.
1787
N. J.
1787
PENN.
1787
N. Y.
1788
CONN.
1788
MASS.
1788
R. I.
1790
MAINE
1820
BAHAMA
ISLANDS
Longitude 105°
West 100°
from 95°
90° Greenwich
BORMAY & CO., N.Y.

AMERICAN GOVERNMENT

INTRODUCTION

CHAPTER I

GENERAL CHARACTER OF AMERICAN GOVERNMENT

1. Some of the Things our Governments are doing for Us. — All of us enjoy the advantages of living under at least three governments — a national, a state, and a county government — and most of us have the benefit conferred by a fourth government as well.[1] The primary purpose for which these governments exist, is the protection of our lives and property; although their work includes so much more that we may truthfully say the object of our governments is to protect the citizens of the country and to promote their general welfare. For not only do the governments punish the persons who rob us or do us personal injury, and so prevent others from committing similar acts of violence; but they make and carry out laws under which we may buy and sell goods, loan or borrow money, and make contracts. They care for the public health and develop communication with other sections by constructing roads and building bridges. They give a common school education and some-

Our different governments.

The primary object of government.

The secondary functions performed by our governments.

[1] This fourth government may be a municipal, a village, a township government, or a school district government.

times collegiate training at public expense, and often provide us with free libraries, with free parks and art galleries. Further than that, they conduct great business operations where the business is of such importance to all the citizens that it ought not to be left to private parties. For example, the national government collects, transports, and delivers letters, periodicals, and books at charges so low that they do not cover the cost of doing this work. Many of the city governments have established systems of waterworks, and furnish a supply of pure drinking water at the lowest possible charges. These and many other things our governments are doing for our protection and benefit, not at intervals, but every day in the year.

Government's demands of the citizens.

For the successful completion of these duties, our governments require large sums of money, to be raised annually by taxation or loans, and must receive from the citizens a support that is intelligent and unwavering. In many cases the taxes are very burdensome, so great are the current expenses of government. Quite commonly also popular interest is lacking, and the public offices become filled with selfish or even corrupt men who use their power for their own advancement. On this account, the benefits of government are often lost, and the disadvantages only are apparent.

The Need of Government

Protection of life and property.

2. The Essential Functions of Government. — Some people have asked the questions, "Why do we need governments to do these things?" "Cannot most or all of them be done as well or better without the aid of government?" Even those extremists who believe that government should do as little as possible, freely admit that life and property must be fully protected by it, for, if every man may take

the law into his own hands, we should soon return to that condition of barbarism where might makes right.

Legal and business relations.

Government is also necessary to enact laws which define our legal relations to one another, or which allow us to make with other parties contracts or agreements, that the governments will compel both them and ourselves to perform. In so complex a civilization as ours, the laws relating to these subjects must not only be fixed and clearly understood, but the rights of every individual under them must be jealously guarded, and these duties government alone can fulfill.

An enumeration of essential functions.

In his admirable book on *The State*,[1] President Wilson enumerates eight "constituent" or essential functions of government.

(1) The keeping of order, and providing for the protection of persons and property from violence and robbery.

(2) The fixing of the legal relations between man and wife and between parents and children.

(3) The regulation of the holding, transmission, and interchange of property, and the determination of its liabilities for debt or for crime.

(4) The determination of contract rights between individuals.

(5) The definition and punishment of crime.

(6) The administration of justice in civil causes.

(7) The determination of the political duties, privileges, and relations of citizens.

(8) Dealings of the state with foreign powers; the preservation of the state from external danger or encroachment, and the advancement of its international interests.

The extent of governmental activity.

3. The Optional Functions of Government. — Very few people object to the performance of these functions by government; but some persons doubt whether government should attempt to look after such things as the construction of roads, the maintenance of schools, the care of the poor,

[1] § 1478.

and many others which in times past have been done by each individual for himself, or by voluntary organizations. Let us assume that the many public improvements which are now undertaken by our governments were no longer left in their charge, and see what difficulties would be encountered before even those most needed were completed. If a bridge were to be built, and a mass meeting called of the citizens who were especially interested, the location, size, cost, and method of construction would probably cause prolonged and fruitless discussion. More than all else, the expenses of the undertaking could be met only by voluntary subscriptions, which would not only be unsatisfactory, but would probably make it impossible to raise the amount needed. Because of these and other difficulties which individuals are sure to encounter in their attempt to make public improvements, it has been found advisable to leave matters of common interest to our governments, which are fitted for this work both because of their organization and by virtue of the authority which they possess.

An enumeration of some optional functions.

As a partial list of these optional or "ministrant" functions, President Wilson gives the following:[1]

(1) The regulation of trade and industry. Under this head I would include the coinage of money and the establishment of standard weights and measures, laws against forestalling and engrossing, the licensing of trades, etc., as well as the great matters of tariffs, navigation laws, and the like.

(2) The regulation of labor.

(3) The maintenance of thoroughfares — including state management of railways, and that great group of undertakings which we embrace within the comprehensive term "Internal improvements."

(4) The maintenance of postal and telegraph systems, which is very similar in principle to (3).

(5) The manufacture and distribution of gas, the maintenance of waterworks, etc.

[1] *The State*, § 1479.

(6) Sanitation, including the regulation of trades for sanitary purposes.

(7) Education.

(8) Care of the poor and incapable.

(9) Care and cultivation of forests and like matters, such as the stocking of rivers with fish.

(10) Sumptuary laws, such as "prohibition" laws, for example.

4. The Need of National, State, and Local Governments. — No one government can do all the things needed by the people, for some subjects, like the making of treaties with foreign nations, must be intrusted to a single government for the whole United States, in order that the people of New York may not have one treaty with France, those of Illinois another, and those of California a third. Other duties such as the construction of roads, and care of schools can be properly performed only by governments of small districts like towns, cities, or counties. We have, therefore, local governments to look after purely local affairs, state governments to make laws on all subjects that ought not to vary greatly from county to county, and yet need not be the same throughout the United States, and a national government which represents us in our dealings with other nations, cares for trade relations between the States, coins money, and makes the laws that should be the same in Maine as in Texas.

Three sets of governments necessary.

The Essential Features of American Government

5. Our National and State Constitutions. — All of the governments in the United States are popular governments — that is, the people, acting through the qualified voters or legal representatives, decide what the form of each government shall be, what power it shall possess, and in what way the government and its powers shall be changed at any time.

The constitutions embody the wishes of the people,

In order, however, that the form and the powers of the governments shall remain the same until the people wish them changed, the people of the Nation have adopted a very important document called the Constitution of the United States, and the people of each State have adopted a similar constitution for their State. By these constitutions the people have created such governments as they think are best fitted to care for the public interests of the States and the Nation. The constitutions cannot be altered by the governments, neither can the governments make any change in their own powers. *All changes in an old constitution must be made by the people, who made that constitution, and who may abolish the old constitution and have a new one in its place.* Since, therefore, the people may change their old constitutions and make new ones, we say *the people are sovereign:* that is, the people have the supreme power which governments and individual citizens are obliged to obey.

and can be changed only by the people.

The exact method by which the people are to change any existing constitution is prescribed in the constitution itself. There is considerable variation in the process used to amend the present state and national constitutions, as we can see by consulting §§ 134–136, 237.

Contents of the constitutions.

6. Citizens and the Rights of Citizenship.—These constitutions not only give the form and powers of the governments, as described later (§§ 11–18), but they treat of the very important subject of citizenship, enumerating the rights which all citizens possess.

Definition of citizenship.

The national Constitution in the Fourteenth Amendment, adopted in 1868, gives this definition of citizens: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside." Almost every one living in the United States at the present time is, therefore, a citizen; and all citizens have certain rights to life, liberty,

and property which either the United States Constitution or the state constitutions declare shall not be taken away from them.

Why all citizens are not voters.

7. The Privilege of Voting. — These constitutions also state who may take part in the work of government by voting. Not all citizens are allowed to vote, as some people imagine, because most of them are not old enough nor sufficiently trained to do so intelligently. Accordingly only those classes of citizens who are especially qualified by maturity, experience, and their daily contact with the world, are allowed the privilege of voting. At the present time no one less than twenty-one years of age is granted this privilege, and in only four States are women allowed to vote.

The qualifications of voters are given in the state constitutions, as the United States Constitution allows those who may vote for state officials to vote also for national officials. Aliens who intend to become citizens are given the elective franchise in some States.

Character of these laws.

8. City Charters and County Government Acts. — Just as the Nation and the States have constitutions, so the cities have fundamental laws called "charters," and the counties similar ones called "county government acts." As the city and county governments devote a great part of their attention to carrying out state laws, and as each city and county covers but a small area, it would be unwise to allow each to make a constitution different from its neighbor's. Their fundamental laws are, therefore, framed by the state legislatures according to general rules laid down by the people of the whole State in the state constitution. Frequently, however, the counties and cities are permitted to suggest or even adopt sections of the fundamental laws.

Why three departments are necessary.

9. The Departments of Government. — In order that any government may properly perform the work for which it has been created by the people, it must have three departments. First of all, there must be some body to make laws, and this body is called the legislature or the *legislative department.* Then we must have officials who see

that the laws are obeyed, and these officials who enforce the laws constitute the *executive department.* Finally, a system of courts is necessary so that proper punishment may be meted out to those who break the laws, and that persons who have suffered loss or injury at the hands of others may have an opportunity to secure redress for the wrong done. These courts which interpret the laws are known as the *judicial department.*

Dependence of local governments.

10. The Difference between a State Government and the Local Governments. — Counties, cities, and towns do not have real legislatures, although they have bodies which make by-laws (local laws) or pass ordinances which supplement the laws of the States. Since, therefore, they do not have true legislatures, and do not have true constitutions, their governments are subordinate to the governments of the States.

State and national governments.

On the other hand, the national government is not subordinate to any state government, nor to all of the state governments taken together, neither is any state government subordinate to the national government.

Distribution of powers in a federal system of government.

11. Our Federal System of Government. — Since the national and the state governments are independent of each other, we have in this country what is called a *federal system* of government. This means merely that such matters as making war, raising an army and navy, making treaties with foreign countries, regulating foreign and interstate trade, admitting new States to the Union, and many other things that no one State can do for itself, are intrusted to the national government; while the governments of the States are allowed to make and carry out laws concerning the holding and transference of land, laws dealing with marriage and divorce, education, the punishment of crime, the incorporation of industrial and most other corporations, in

fact, with an almost innumerable list of subjects, for which uniform laws are not necessary throughout the United States.

Difference between a centralized and a federal system of government.

In some countries most or all of these subjects last named are looked after by the national government, which is then called a *centralized* government. In the United States, however, these powers of government are left with the States, and the States cannot be deprived of them except by the people of the whole United States in the cumbersome way provided for the amendment of the national Constitution, so that we have a system that is not centralized, but which constitutes a form of federalism.[1]

The National Government

Its adoption and provisions.

12. The United States Constitution. — Our national government derives its authority from the Constitution of the United States, which was drafted by a convention held in Philadelphia in the summer of 1787, and was ratified by conventions elected for that purpose in the thirteen States that then composed the Union. This Constitution enumerates the different powers that may be exercised by the three departments of the national government, and tells how Congress shall be organized, how the President shall be chosen, and what the national judicial system shall be like. By it the States are prohibited from making war, treaties, or alliances, in order that the States may not be able to interfere with the work of the national government. Fifteen amendments to this Constitution have since been adopted.

[1] As far as possible the term "Federal State" has been avoided in this book, because the concept of a Federal State is not easily grasped, and space is lacking to explain and illustrate it. The expressions "federalism" and "federal system of government" are ordinarily substituted for it. For a fuller account of American Federalism see Chapter XX.

The Senate.

13. Congress. — The legislative power granted to the national government is vested in a Congress of two houses, the smaller of which is called the Senate, and the larger the House of Representatives.[1] The Senate is composed of two members from each State who are elected by the state legislatures for a term of six years. The representatives, on the contrary, are elected for a term of two years by the voters from districts into which the States are divided, the number of districts in a State depending upon its population. In addition to its general legislative powers, each of the houses is given certain exclusive ones, for which it is thought to be particularly fitted. For example, when the President appoints an official to a high position, the Senate has the right to confirm or reject the appointment, although the House of Representatives has nothing to say about the matter.

The House of Representatives.

Special powers of the houses.

The President.

14. The Executive Department. — The execution of the laws made by Congress is intrusted to the President of the United States and assistants appointed by him with the consent of the Senate. Presidential elections occur in November of every leap year,[2] and the successful candidates for the offices of President and Vice-president are inaugurated upon the fourth of March in the following spring, holding office for four years. The chief assistants of the President, such as the Secretaries of State, War, and the Treasury, form his Cabinet and aid him in performing his duties.

The heads of the executive departments.

The Supreme Court and inferior courts.

15. The National Judiciary. — All judges connected with the national courts are appointed for good behavior by the President with the consent of the Senate. Our chief court, called the Supreme Court, consists of a chief justice and eight associate justices who sit as a single body at Wash-

[1] Commonly called the House.

[2] Presidential elections occurred also in 1800 and in 1900.

ington; but the judges of the lower courts, — the Circuit Courts of Appeals, the Circuit Courts, and the District Courts, — try cases in the various cities of the country, so as to be nearer the places where the parties to the suit reside.

State and Local Government

16. The State Constitutions. — Each State makes its own constitution, the voters electing delegates to a state constitutional convention which frames the constitution, and then, usually, gives the voters an opportunity to accept or reject it. The constitution cannot give the state government power to do anything denied to the State by the national Constitution. Subject to this limitation, it may grant the state legislature as much or as little power as it pleases, may make the legislature large or small, may have the governor elected for a long or short term, and may arrange to have the judges either elected by the voters or appointed by the governor or the legislature. All of which shows that the people of each state have a great deal of freedom in looking after their own affairs, though they must be careful not to do anything forbidden by the Constitution of the United States.

People make the state constitutions subject to the national constitution.

17. The State Governments. — All of the States in the American Union have governments that are very much alike. State legislatures are invariably made up of two houses, one of which is larger than the other, although the members of both are elected by the voters in districts into which the States are divided. The people also elect the governors and the other chief executive officials, the remainder being appointed. State judges are not so universally chosen by popular election and their terms are apt to be longer than those of the legislators and the governors; but

The three departments.

even with the judges short terms are the rule and appointment the exception.

The structure of government in counties, cities, and towns.

18. Local Government. — Local government is of several kinds — that of the county, the city, the town, the village, and the school district. All of the States are subdivided into counties, but the officials elected in the counties devote as much of their time to carrying out state laws as to looking after purely local affairs. Every city has its mayor, its council, and a large number of administrative officials who hold office for very short terms. Small urban centers frequently have village government somewhat similar to that of the cities. In the New England and a few other States, every county is made up of several towns. Each town holds a mass meeting of the voters, at which most of the local laws are made and town officers are selected. In many States the principal political subdivisions of the counties are the school districts, which care for the most necessary local interests.

General References

Wilson, *The State*, §§ 1084–1095, 1473–1513.

Hinsdale, *The American Government*, §§ 5–7, 223–233, 248–262.

Bryce, *The American Commonwealth*, abridged ed., pp. 3–5, 16–21, 224–242, 287–296.

Ashley, *The American Federal State*, §§ 24–29, 238–246.

Topic

THE PROPER SCOPE OF GOVERNMENTAL DUTIES: Willoughby, *Rights and Duties of American Citizenship*, pp. 53–66; Wilson, *The State*, §§ 1514–1536.

Studies

1. What are the most essential duties performed by any government? What less important ones are now commonly performed by our national, state, or local governments? Wilson, *The State*, §§ 1478–1512.

2. What is meant in political science by the term "State"? Give an explanation of the expression "Federal State." Ashley, *American Federal State*, §§ 2, 11, 12.

3. The present scope of governmental duties. E. Wambaugh, *Atlantic Monthly*, LXXXI (1898), 120–130.

Practical Questions

(On these questions consult the United States Constitution, Article I, Section 8, and if the power referred to it is not mentioned there, it may be assumed that it is exercised by the States and not by the national government.)

Does the United States government, or do the respective state governments make laws in the following cases?

1. Making a naturalization law by which foreigners become citizens.
2. Determining the minimum length of the school year.
3. Punishing a murder committed within a State.
4. Deciding whether a foot or a meter shall be the legal standard for linear measurement.
5. Caring for a postal system.
6. Levying duties upon cloth imported at New York.
7. Making laws relating to marriage and divorce.

CHAPTER II

THE SELECTION OF PUBLIC OFFICIALS

Election and appointment.

19. The Two Methods of Selection. — As no government will run itself, it is necessary to choose certain officials to perform the legislative, executive, and judicial duties which every government must undertake. Practically all of the public officials who compose the governments which have been outlined in the previous chapter are *elected* by the voters at regular elections, or are *appointed* by some higher official or set of officials.

Officials and employees.

Not all of the persons connected with any government are called officials, for most of them are merely employees whose work involves comparatively little responsibility.

Relative use of the two methods.

The system of appointment is used much more for national officials than for state and local ones, all of the national judges and all of the national executive officers except the President and Vice-president being appointed. Almost all state and local judges are elected, and the most important executive and administrative officials of the States and the localities are chosen by the voters. All of our legislators, moreover, including congressmen, state assemblymen, city councilmen, and county supervisors, are elected directly by the people.

From nomination to installation.

20. The Steps in Popular Election. — When voters go to the polls and cast their ballots they vote for those only who have been *nominated* for that office. These nominations are made several weeks before the election by conventions held by the political parties. Between the nominations and the election these nominees or candidates, aided by the very complete organization of their party, make every effort in the *campaign* to win over the voters to their side. After the voters have expressed their preference in the *election*, the successful candidates are *installed* in office upon the day set by law for assuming their new duties.

Nominations for Elective Office

21. Nominating Conventions. — Candidates for the offices which are filled by popular vote, are chosen by conventions of delegates. If the convention meets to nominate candidates for state offices, the delegates are chosen in county conventions. The county conventions are in turn composed of delegates elected directly by the voters in primaries.

Composition of the conventions.

When the delegates have gathered upon the day selected, the convention proceeds to choose a temporary chairman and other officers, and to appoint several committees. One of these committees reports to the convention a set of resolutions embodying the party's views upon public questions, while a second proposes the names of the permanent officers of the convention. Once organized, the convention begins its real business of nominating candidates. If but one name is suggested for any office, the secretary is usually instructed to cast a ballot for that person. Otherwise the delegates vote by ballot until some one person has a majority of all the votes cast.

Procedure in a convention.

22. The Primaries. — Since the delegates to all local conventions are chosen directly by the primaries, and the delegates to state and national conventions indirectly by primaries, the primaries are a very vital part of the system of popular election. Each primary is supposed to include all of the voters belonging to one party who may reside within the district or precinct for which it is called. It would naturally be supposed that every voter would attend the primaries to which he is eligible, because his only opportunities of securing good men for office are at the primaries and at the polls on election day. At the election, his choice will be limited to the candidates that have been nominated, all of whom may be unsatisfactory;

Importance.

Composition.

The ward committees and the voters.

but at the primaries he may aid in electing delegates who will be sure to favor good men. In reality, the primary gives him a much better opportunity to obtain good government than the election does. Nevertheless, the majority of the voters in the United States neglect to attend the primaries, or go only to confirm the list of delegates proposed by the ward committee of their party (§ 31). This committee undoubtedly knows better than the average voter who will make good delegates, so that its list of names should ordinarily be accepted; but very often, the committee proposes unfit men that will not act for the best interests of the party. It is of the first importance, therefore, that every voter attend the primaries of his party, and make sure that the right men are chosen.

Candidates selected by the voters directly.

23. Direct Nominations. — In several States, candidates are nominated for local offices, not by conventions, but by a direct vote of all the members of their party. The names of all those who desire the nomination for any office are placed on file with the city or county clerk as soon as they have obtained the signatures of a certain number of voters. On a day set by law an election is held, similar in most respects to a regular election (§ 26), and the voters are allowed to select their candidates for each office to be filled at the coming election, provided that no one is permitted to vote for candidates of more than *one* party. The candidate of each party who receives a greater number of votes than any other candidate of the same party for the same office is declared the nominee of that party for that office, and his name appears as such on the official ballot used in the regular election.

The Campaign and the Election

24. The Campaign that precedes every election is conducted by permanent party committees (§ 31), which make every effort to elect their candidates. Money must be obtained to pay the expenses of printing campaign literature and to secure the services of speakers, while personal effort must be made to obtain the support of the "waverers," and bring all of the party's adherents to the polls. In a city election the general conduct of the campaign, including the raising and distribution of funds, belongs to the city committee, and the ward committees under its charge organize clubs, hold meetings, and perform active duties on election day. In the campaigns of to-day, fortunately, less appeal is being made to prejudice and selfish interests than was formerly the practice.

Efforts made to secure votes.

25. Preëlection Requirements.—In one half of the States all electors who wish to vote must register their names before election, showing where they reside and proving that they have a right to vote. In the other States, registration is usually required only in cities. These registered electors can then vote only at the election booth of the precinct in which they live. This enrollment is necessary to prevent men from voting in more than one precinct, as the officials in charge of the election may not have a personal acquaintance with the voters.

Registration of voters.

Most of the States have now adopted, with some modifications, a form of ballot similar to that in use in Australia. The names of candidates of each party or ticket are placed in a column separate from the candidates of all other parties. Sample ballots are sent to the voters by the city or county clerks before election, so that an opportunity is given to learn the names and investigate the qualifications of the candidates.

The Australian ballot.

To vote for a person, stamp a cross (X) in the square at the right of the name.

REPUBLICAN TICKET		DEMOCRATIC TICKET		SOCIALIST TICKET		PROHIBITION TICKET		CONSTITUTIONAL AMENDMENTS		
For Governor, GEORGE C. PARDEE.		For Governor, FRANKLIN K. LANE.		For Governor, GIDEON S. BROWER.		For Governor, THEODORE D. KANOUSE.		**Senate Constitutional Amendment No. 4** Relating to the public school system and the support of public schools.	Yes.	
For Lieutenant-Governor, ALDEN ANDERSON.		For Lieutenant-Governor, I. B. DOCKWEILER.		For Lieutenant-Governor, FRANK R. WHITNEY.		For Lieutenant-Governor, S. P. MEADS.			No.	
For Secretary of State, CHARLES F. CURRY.		For Secretary of State, ALEXANDER ROSBOROUGH.		For Secretary of State, FRED C. WHEELER.		For Secretary of State, ARTHUR C. BANTA.		**Senate Constitutional Amendment No. 18** Relating to the division of the State into fish and game districts.	Yes.	
For Controller, E. P. COLGAN.		For Controller, FREDERICK HARKNESS.		For Controller, S. EDGAR ALDERMAN.		For Controller, J. E. MCCOMAS.			No.	
For Treasurer, TRUMAN REEVES.		For Treasurer, SAM H. BROOKS.		For Treasurer, OSWALD SEIFERT.		For Treasurer, JAMES CAMPBELL.		**Senate Constitutional Amendment No. 3** Relating to the exemption from taxation of all bonds issued by the State of California, or by any county, city, city and county, town, municipality, municipal corporation of any sort, or district (including school, reclamation, and irrigation districts), within said State.	Yes.	
For Attorney-General, U. S. WEBB.		For Attorney-General, WILLIAM A. GETT.		For Attorney-General, CAMERON H. KING.		For Attorney-General, JOEL H. SMITH.			No.	
For Surveyor-General, VICTOR H. WOODS.		For Surveyor-General, C. H. HOLCOMB.		For Surveyor-General, W. STEVENSON.		For Surveyor-General, THOS. B. RUSSELL.		**Senate Constitutional Amendment No. 6** Relating to city charters.	Yes.	
For Clerk of the Supreme Court, FRANK C. JORDAN.		For Clerk of the Supreme Court, L. H. WILSON.		For Clerk of the Supreme Court, SCOTT ANDERSON.		For Clerk of the Supreme Court, C. C. COLLINS.			No.	
For Superintendent of Public Instruction, THOMAS J. KIRK.		For Superintendent of Public Instruction, E. W. LINDSAY.		For Superintendent of Public Instruction, ANNA F. SMITH.		For Superintendent of Public Instruction, CHARLTON EDHOLM.		**Assembly Constitutional Amendment No. 25** Relating to the hours of labor on public work.	Yes.	
For Superintendent of State Printing, W. W. SHANNON.		For Superintendent of State Printing, E. I. WOODMAN.		For Superintendent of State Printing, S. H. LAVERTY.		For Superintendent of State Printing, LEROY S. ATWOOD.			No.	

This is a part of a ballot used in the election held in California, November 4th, 1902. The ballot complete measured 21 × 22 inches, and contained the names of nominees for thirty-eight offices. There were two vertical columns for independent and irregular nominations on the original.

26. Holding an Election.—A person who wishes to vote goes to the polling place which has been selected for his precinct by the authorities and which is kept open about ten hours on election day. He first gives his name and address to a clerk who records both and learns whether the voter was duly registered, provided registration is required. He then receives a numbered "official ballot," which he takes into a booth where he is cut off from communication with others. With a rubber stamp he places a mark opposite the names of the candidates of his choice (or, if permissible, opposite the name of the party, if he wishes to vote a "straight" ticket), folds the ballot, and hands it to the election inspector. The inspector tears off the number, announces the name of the voter, and then deposits the ballot in the ballot box. The clerk at the same time records the fact that the person has voted.

The process of voting.

Each party is allowed to have a certain number of "watchers," who make sure that the election proceedings are perfectly regular. Any voter may be "challenged" by any other voter on the ground that the former is not eligible to vote in that precinct. He must then take an oath that he has a right, or he will be excluded from voting.

Challenging of voters.

When the polls are closed the ballots are publicly counted by the judges, who then forward the ballots to a canvassing board which examines the returns and makes an official announcement of the number of votes cast for each candidate. The successful candidates are duly notified and later installed in office.

Canvassing the votes.

The usual time for holding county, state, and national elections is the Tuesday after the first Monday of November. City elections are ordinarily held separate from other elections either in November of different years from the state elections or at other times. Town elections are usually held in the spring.

Times of holding elections.

Pluralities and majorities.

For almost all offices filled by popular election, only a plurality of votes is necessary to elect. Certain of the New England States formerly required a majority over all others for their governors, but as a second election was then often made necessary, a majority is no longer demanded, except in Vermont where the legislature is allowed to elect the governor if no one has a majority.

Qualifications of voters.

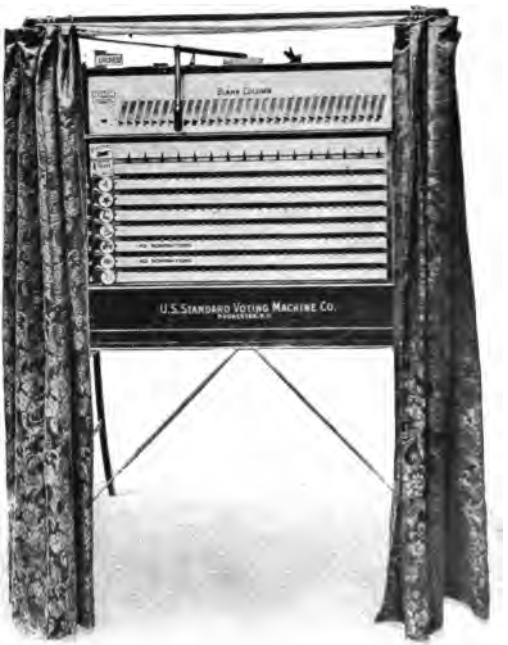
27. Who may Vote. — The qualifications for voters are prescribed by the States in their constitutions. The United States Constitution, however, prevents the States from denying to citizens the right to vote on account of race, color, or previous condition of servitude, so that, although the requirements are not the same in all the States, the differences are, on the whole, not very great. Two thirds of the States permit only citizens to take part in elections, but thirteen give the right of suffrage to aliens who have declared their intention of becoming citizens. In four States, Wyoming, Colorado, Idaho, and Utah, women are allowed to vote on the same terms as men.

Persons disqualified.

All over the country voters must be at least twenty-one years of age, and have been residents of the State a certain period, varying from three months to two years, and of the county and precinct a shorter time. Insane persons and idiots are universally excluded from voting, as are men convicted of some serious crime, for which they have not been subsequently pardoned. Paupers are sometimes debarred from the suffrage, and many States demand the prepayment of taxes. An effort has been made to raise the intellectual standard of the voters by shutting out those who cannot read or write. Some of the Southern States require ability to read or possession of a fairly large amount of property.

Educational and other tests.

Maine, Massachusetts, Connecticut, Delaware, Wyoming, and the States mentioned below demand an ability to read. Mississippi allows men to vote who can understand the constitution when read to them. North Carolina has an educational test, but does not apply it



A SAMPLE VOTING MACHINE.

In many States the use of voting machines is permitted by law. In the one shown above all of the candidates on one ticket are in the same horizontal column, all of the candidates for any office being in the same vertical column. After closing the curtains the voter turns one of the large knobs shown at the left of the cut. This raises all of the little pointers in that horizontal column, and completes the process if the voter wishes to vote a "straight" ticket. If he desires to vote for other candidates for any offices, however, he turns down the pointer in the column in which the office is located and turns up the pointer which is immediately above the candidate preferred. In either case he then opens the curtains and the vote is mechanically recorded.

to those who voted or whose ancestors voted before 1867. South Carolina does not deprive those intellectually unfit if they own property assessed at three hundred dollars. In Alabama voters must be able to read or must own property worth three hundred dollars, unless they have seen military service. Virginia requires ability to read or understand the constitution, or the payment of a state tax not less than one dollar per year, unless the individual has seen military service or is the son of an American soldier. In Louisiana those may vote who can read or write, or who own property assessed at three hundred dollars, or whose ancestors voted before 1867.

Congressmen and presidential electors are chosen by those persons in the different States who are allowed to vote for members of the state legislatures.

Votes cast and counted, 13,961,566	
Persons qualified to vote	19,850,000[1]

HOW VOTERS STAYED AWAY FROM THE POLLS (1900)

28. Historical Changes in the Suffrage. — The suffrage requirements of today are the result of a gradual evolution extending over nearly three centuries. For our purpose, it will be sufficient to notice the general characteristics of three periods in our history. (1) The first includes the seventeenth and eighteenth centuries, during which the right to vote was greatly restricted. As a rule no man was permitted to share in the election of public officials unless he owned real estate. In the North, land of a certain value was required, in the South, a freehold of a certain size. (2) During the first half of the nineteenth century, these property qualifications were rapidly replaced by a tax-payers' qualification, and later by one demanding that citizenship should be the sole requirement for electors. Many of the Western States went much farther, and gave the ballot to those aliens also who had declared their intention of becom-

Before 1800.

Between 1800 and 1870.

[1] Deducting five per cent from male population over twenty-one, to allow for persons disqualified for various reasons.

ing citizens. The national government aided in this movement for the extension of the franchise, by proposing the Fifteenth Amendment to the Constitution of the United States, which in 1870 gave the negroes the same voting rights as the whites. (3) Since 1870 great progress has been made in placing the suffrage upon a safer basis. The list of persons disqualified because intellectually or otherwise incompetent grows constantly longer, an especial effort being made at the South to exclude the least fitted blacks without violating the national Constitution. At the same time discriminations regarding sex are becoming less pronounced, the standards for women, when they are allowed to vote, being the same as those for men.

Since 1870.

Dangers arising from fraud and bribery.

29. Efforts made to guard the Purity of Elections. — In popular governments like ours, anything that prevents the people from voting freely and electing as public officials the persons whom they wish, is a serious misfortune. If any set of men, by using undue influence, bribery, force, or fraud can defeat these wishes of the people, they have to that extent injured our political system. For these reasons, laws have been made, or have been proposed, which will protect the honest many from the corrupt few. Only a few years ago, before the Australian ballot was adopted, it was almost impossible for a man to vote secretly, as partisan workers were allowed free access to the polling places, and there was little difficulty in learning for which party the vote was cast. The buying of votes, both before and at election, was very much more common than it is now. Often election returns were tampered with. These and other abuses have been largely abolished because the public has been aroused to the magnitude of the wrong and has insisted upon better laws which have been more strictly enforced.

Ballot reform.

Among the means used to prevent bribery of votes, especially prominent are the "corrupt practices acts," which require the different candidates to file with the state secretaries of state or county clerks after election, a complete statement of all money they have expended.

Corrupt practices acts.

The Influence of the Political Parties in Elections

30. The Important Work done by the Political Parties.— The distinguishing characteristic of American government, as we mentioned in the last chapter (§ 5), is government by the *people*. It must be apparent, however, from the preceding sections that it can truthfully be said, government in the United States means government by the people *acting through political parties*. The electors must organize in order to nominate candidates and secure their election, and the political parties have been created to furnish permanent organizations for those persons who hold the same views on great public questions. The political parties are therefore the agents which carry out the will of certain classes of voters.

The political party as an organ of our government.

In order to perform its work, each party maintains a permanent organization consisting of committees, and temporary nominating bodies called primaries or conventions. As we have already observed how primaries and conventions are composed, and what methods they use in nominating candidates (§§ 21, 22), we need consider only the party committees.

Party organization.

31. The Permanent Party Committees are composed of representatives elected by the members of the parties for terms of two or four years. The ward committees, the city committees, and the county committees are chosen in the

Composition of political party committees.

primaries, while the members of the state committees are selected by county conventions. The national committees of each party consist of one member from each State, elected by the delegates from that State to the national conventions which nominate candidates for President and Vice-president. Reëlection of committeemen is the rule, so that the committees are more permanent bodies than our county or state legislatures. As these committees may hold sessions at any time, and as the local committees usually act in connection with the state and national committees, each party has an organization of considerable power and efficiency.

Work in connection with primaries.

32. The Work of the Party Committees includes the calling of primaries and conventions, and the conduct of the election campaigns. They decide what voters shall be allowed to attend any primary, frequently using this power to exclude members of their own party who oppose the wishes of the committees. They usually propose to the primaries lists of names, popularly known as "slates," and use every means to secure the election of these men as delegates. Conventions are frequently dominated by the committees in the same way, especially when a committee is working for itself and not for the party. During the campaign, the committees are very active both before election and on election day, in securing votes for the party candidates. Because of the completeness of the committee organization, and the harmony with which the parties work together, the whole system of party committees is frequently known as the "machine."

Work at conventions.

The machine.

Selfish character of a ring.

33. Bosses and Rings. — When a machine becomes powerful enough to ignore the party members whom it is supposed to represent and serve, it often uses its power for purely selfish purposes not alone in controlling primaries,

but in electing candidates and in making laws. If, in turn, the machine does the bidding of a clique of men, these partisan dictators form what is known as a "ring." A striking instance of the enormous power that may be wielded by a ring is given by the famous Tweed Ring which controlled the government of New York City for several years, during which many millions of dollars were stolen from the city treasury.

The boss.

The term "boss" is ordinarily used to designate the leader of any state or city committee who has been able to make the other committeemen follow his policy. He is usually a man of considerable executive ability, and a keen student of men and affairs. Boss rule is chiefly objectionable because it represents an extreme concentration of power, with comparatively little chance of enforcing responsibility, although in the long run no boss can maintain his position in the face of popular opposition.

The Appointment of Public Officials

The methods of appointing and removing.

34. Appointments and Removals. — The majority of the persons who hold office through appointment are employees rather than officials, although many who have duties of the greatest importance are appointed. These highest officials are usually selected by the chief executive of the government to which the position belongs, that is, by the President, governor, or mayor, but before they may assume office, their appointment must ordinarily be confirmed by the national or state senate or by the city council. The terms for which officials are appointed are usually short, and the incumbent may be removed in many cases at the wish of the official by whom he was appointed.

35. The Spoils System. — For over half a century, it has

Extensive use of the system.

been the custom in the United States to change the whole corps of minor appointed officials and many of the employees whenever there has been a change in the elected head of any department of government, on the principle that "to the victors belong the spoils." The places made vacant by these removals have been filled by followers of the new chief, or by persons to whom he is indebted for partisan favors. This custom popularly known as the "spoils system" has given us neither a skilled nor an efficient body of public servants, and has done so much harm to good government that a widespread demand for "civil service reform" has arisen.

Objections to the spoils system.

The need of trained public servants.

36. Civil Service Reform. — The opponents of the "spoils system" have worked earnestly for the adoption of a system in which officials should be appointed and promoted, not by reason of political influence, but solely on merit. They have claimed and shown beyond question that it is not necessary for these appointed officials to hold any particular views on political questions, but that, on the contrary, only trained and competent persons can properly perform the duties of these positions. In 1883, they succeeded in persuading Congress to pass the Pendleton Act, making appointments to a few offices in this way, and at present more than one half of all the appointive officers under the national government are filled by persons whose fitness has been proved (§ 374).

Progress of reform movements.

Many state and local offices, formerly the legitimate spoil of partisan leaders, are now filled in the same way.

General References

Ashley, *The American Federal State*, Chapters XXII–XXIII and §§ 341–345.

Bryce, *The American Commonwealth*, abridged ed., pp. 44–48, 447–477.

Cleveland, *The Growth of Democracy*, pp. 128–156, 285–311.

J. H. Haynes, "Qualifications for Suffrage," in *Political Science Quarterly*, XIII, pp. 495–512.

Remsen, *Primary Elections.*

Dallinger, *Nominations for Elective Office*, Part II.

Ford, *The American Citizen's Manual*, pp. 84–144.

Topics

HISTORICAL CHANGES IN THE SUFFRAGE: Ashley, *The American Federal State*, §§ 73, 170, 223, 516, Appendix F, Table I; Cleveland, *The Growth of Democracy*, pp. 128–152; J. F. Colby, in Lalor's *Cyclopædia of Political Science*, III, pp. 824–832; F. N. Thorpe, in *Harper's Monthly*, XCIV (1897), pp. 207–215.

THE NOMINATION OF A PRESIDENT: Bryce, *The American Commonwealth*, abridged ed., pp. 460–477; Dallinger, *Nominations for Elective Office*, pp. 74–87; A. M. Low, in *Scribner's Magazine*, XXVII (1900), pp. 643–656.

THE PROGRESS OF CIVIL SERVICE REFORM: W. G. Rice, in *North American Review*, 161 (1895), pp. 602–611; T. Roosevelt, in *Atlantic Monthly*, LXXV (1895), pp. 239–246; Fifteenth Report of Civil Service Commission, pp. 443–502.

Studies

1. The primaries in large cities. Dallinger, *Nominations for Elective Office*, pp. 100–121.

2. The reform of the primary. Ashley, *American Federal State*, §§ 549–551.

3. Recent changes in suffrage laws in the South. Oberholtzer, *The Referendum in America*, pp. 120–125.

4. What proportion of the possible voters actually vote? Hart, *Practical Essays on Government*, pp. 20–57.

5. Conducting a Campaign. *Review of Reviews*, XIV (1896), 550–559, XXII (1900), 549–562.

6. The President's patronage. Bryce, *American Commonwealth* abridged ed., pp. 44–48.

7. Is the "spoils system" a greater menace to good government in governments like ours or in monarchies?

NOTE. — On all topics of considerable popular interest, the pupils should be urged to look up additional references to articles in recent periodicals. For example, consult the title, "primary" in periodical indexes for material on that subject. Poole's *Index of Periodical*

Literature, 1815–1899, Abridgement, is especially convenient for articles published before 1900.

Practical Questions

1. Name the chief county officials that are chosen by popular vote; the town officials; the city officials. What important offices connected with each of these governments are filled by appointment?

2. Learn, if possible, how many primaries were held by each political party last year in your precinct. Were they well attended?

3. In what voting precinct do you live? Give its boundaries. Where is the usual polling place? How many votes were cast within the precinct at the last election?

4. Who may vote in this State? What classes of persons are expressly excluded from voting? What length of residence for voters is required in the precinct? in the county? in the State?

5. On what day are congressmen elected? members of the state legislature? the governor of the State? the county officials? the mayor of the city? How long are the polls kept open?

PART I

STATE AND LOCAL GOVERNMENT

LOCAL GOVERNMENT

CHAPTER III

HISTORICAL CHANGES IN LOCAL GOVERNMENT

37. Origin and Development of our Local Governments. — The beginnings of the local governments now found in different parts of the United States can be traced through many changes from the time when the various Teutonic tribes, the Angles, Saxons, and Jutes, conquered Britain in the fifth and sixth centuries, and established local governments of a very popular character. There have been two most important series of changes: (1) those occurring when the early colonists transplanted the local governments of England to America in the seventeenth century; (2) those resulting from the settlement of the West by pioneers from the older States.

Changes during several centuries.

Local Government in England before the Settlement of America

38. The Local Government of Saxon England. — The first settlements made by these bands of Teutonic warriors were usually quite small and were known as towns. When several towns were located in one neighborhood, they united to form hundreds and the hundreds were in like manner united to form shires.

The first Teutonic settlements in England.

Each town held public meetings, the most important of which came in the spring, for the purpose of making local laws, levying taxes, and electing persons to preserve peace and execute the laws. All men

Town government.

able to bear arms were allowed to attend these meetings and take part in the proceedings.

Hundred government.

A hundred was governed by a body of men called a court, composed of five representatives from each town. Its chief duties were to try cases brought before it.

Shire government.

The shires were larger than the hundreds, and were often little kingdoms which in time had become united with other kingdoms and had so lost their separate kings. Each had a chief official called an ealderman and usually a member of the former royal family, in addition to an assembly of representatives from each town called the shire court. The duties of the ealderman and the shire assembly were quite important, and consisted in making and executing laws, as well as trying cases involving them.

Towns become parishes and shires are called counties.

39. English Local Government after the Norman Conquest. — It was scarcely possible that such democratic governments could continue to exist in England after the kings had become more powerful and arbitrary, so that we find many changes occurring between the days of Alfred the Great and Charles the First. Public meetings were still often held in the towns, now known as parishes, although the people had less to say about the work of the government. Hundreds had almost disappeared in all parts of England, and the shires, now called counties, were governed by persons whom the King appointed to take the place of the ealdermen and the shire assemblies.

Powers of the ratepayers' assembly.

40. Self-Government in the Parishes (1600). — The first colonists who came to America from the rural districts of England had been accustomed to take a fairly active part in local government before leaving the mother country. In most of the parishes, those who paid rates or taxes were allowed to elect the parish officers, and to decide how much money should be expended within the parish. The chief officials, called vestrymen, had charge of most local affairs, both church and secular. Besides these, however, there were local police officers known as constables, and the overseers of the poor, the latter being chosen quite frequently by the vestrymen.

The vestry.

Changes in the vestries.

During the seventeenth century, many of the parishes in which the vestrymen had been elected by the ratepayers gave up this right,

and allowed their vestries to fill any vacancies which occurred from death or resignation. These vestries, therefore, became "close corporations"; and as many of them already had the power to decide on the tax rate and to assess and to collect the taxes, the parish government became less popular than formerly.

41. The County Government in England (1600). — Since the King appointed most of the county officers, the people had much less to do with the government of the English counties than with that of the parishes. The chief officials were the *sheriff*, who executed the decrees of the courts and attended to financial matters; the *lord-lieutenant*, who was the King's military representative in the county, and in charge of the militia; and the *justices of the peace*, who not only had the power to try cases as a court or as individual justices, but made local laws, looked after the highways and bridges, and supervised the action of the parish authorities. On account of the number of its tasks, the government of the counties was of the greatest importance, but the people had practically no share in it, although the King usually selected the officials from the landholding aristocracy of the respective counties. **County officials.**

The Local Government established in America

42. The Early Settlements in Virginia. — The first permanent English settlements in America were made in what is now the State of Virginia, beginning in 1607. It was not long before the growing of tobacco became the chief industry of the colony. As the valleys were broad and fertile, and slow-flowing, navigable rivers were numerous, each tobacco plantation had its own wharf from which its tobacco could be shipped direct to England. Towns were therefore small and few in number, the population being scattered over a wide area. This produced two important **Influence of the broad fertile valleys upon**

county government, and society.

results. (1) Since people did not live close together, county government was much more necessary than parish government, and since the county government was practically modeled after that of England, with justices of the peace, and sheriffs appointed by the governor instead of the king, the government was very undemocratic in character. (2) The large estates developed an aristocracy of landowners, who in time gained the right to nominate certain persons for vacancies in the county offices, the governors selecting one of the nominees.

Parish government.

Parishes were established in Virginia, but as their vestries had comparatively little to do, the people were but slightly interested in the parish government, and it became the custom for each vestry to elect persons to fill vacancies occurring in its membership, so that the Virginia as well as the English vestries became close corporations.

Reasons for the Puritan migration to America.

43. The Local Government established in Massachusetts. — Massachusetts and, in fact, most of New England was settled by Puritans who came to this country in order that they might escape the arbitrary government of Charles I and his ministers. Between 1630 and 1640 the Church of England tried to make the methods of conducting church services more elaborate and more uniform throughout England. This was so distasteful to the Puritans that many entire congregations emigrated to America. On the shores of the numerous Massachusetts harbors, or in the narrow valleys, these congregations located, each with a settlement of its own. The homes of the members were clustered around the meetinghouse, and all were surrounded by a stockade to protect them from the Indians. Meetings were held frequently at the church to look after both religious and town business, all of the church members being allowed to take part. So these Massachusetts towns were from the first little democracies, like the ancient Teutonic towns, in

Settlement of a New England town.

Town meetings.

which each man had a voice and a vote in regard to subjects so dissimilar as the election of a pastor and the building of a bridge.

44. Towns and Counties in Colonial New England. — In these meetings the real work of governing the towns was performed, for in them all local laws were made by the voters, officials were chosen to carry out the laws, the tax rate was fixed, and the reports of town officers received and carefully considered. The most important of the meetings was that held in the spring, at which the annual election occurred. From three to nine selectmen were first chosen to look after the general interests of the town between meetings, a clerk was elected to keep the records, and assessors, a collector, a constable, with many other officers, were selected. This system of town government prevailed throughout New England.

Town meetings and officials.

The New England counties were erected in order that there should be districts, larger than the towns and smaller than the colonies, in which courts might be held. The counties were later given officials such as the sheriff, but all of these were appointed by the colonial governor, and their duties were never as important as at the South, where almost all of the local government was left to the counties.

County government.

45. The Township-County Government of the Middle Colonies. — The middle colonies either came under English rule or were settled so much later than those of New England and the South that their local government was largely an imitation of and a combination of those in use to the north and south of them. In New York, the colony was divided into counties before townships were created. The latter had town officers and town meetings, but many of the duties performed in New England by the selectmen were in New York assigned to a county board composed of one supervisor from each township.

The New York supervisor system.

In Pennsylvania, the township was introduced even later than in New York. It never obtained a very strong hold, for most of the duties connected with local government were intrusted to a board of three county commissioners

The Pennsylvania commissioner system.

elected by the voters for the whole county,—the only democratic county government of colonial times.

Changes during the National Period

New methods and functions.

46. Changes in the Original States.—The changes which have occurred in the local governments of the thirteen original States since the time of the Revolutionary War have been comparatively few. In almost all of those States, however, the local officials who were formerly appointed by the state governments are now elected by the people of the towns and counties. Many tasks are now undertaken by the local governments which were not performed by any government in the eighteenth century.

Original home of settlers.

47. Influences affecting the Local Government established in the Newer States.—There are three important influences which have affected the kind of local government that has been adopted in the Western States. (1) Most of the West has been settled by people from the Eastern States, who naturally favored the systems of local government to which they had been accustomed. As the migrations ordinarily followed the parallels of latitude, the Southwest adopted the county form of government and the Middle West one with both townships and counties.

Density of population.

(2) At the beginning villages were nowhere numerous, as the first settlers of the West were farmers living upon separate farms of considerable area. With such a scattered population, county government was the only feasible one, even for the men of New England, until enough persons were living within a small district to make town government possible. We find, therefore, that in States like Illinois, Iowa, and Nebraska there was at first no attempt to establish township government, but later the more populous

sections were allowed to organize township governments wherever the majority of the voters within the township desired.

Self-government in congressional townships.

48. The Influence of the Congressional Township. — (3) The third influence that has affected Western local government is the congressional township. Almost all of the land in the newer States was once under the control of Congress, which had it surveyed into townships six miles square, each of which was composed of thirty-six sections (§ 299). One or two of these sections in each township were given to the States by Congress for the support of schools in the township. In fact, the congressional townships were often made school districts with school officers elected at school meetings which were like town meetings only less important. Later, road commissioners and overseers of the poor were chosen by the voters of the congressional township to look after its highways and its paupers. From this modest beginning, the congressional township has in many States developed a real town government with a town board, assessors, clerk, and other officers.

General References

Strong and Shafer, *Government of the American People*, pp. 1–42.

Fiske, *Civil Government in the United States*, pp. 16–98.

Channing, *Town and County Government in the Colonies*, in Johns Hopkins University Studies, II, pp. 437–489.

Howard, *Local Constitutional History of the United States*, especially pp. 18–62, 135–162, 298–314, 358–426, 458–473.

Studies

1. Make a table to show similarities of and differences between the town (or parish) governments in Anglo-Saxon England, England, 1600, Virginia (1650), and Massachusetts (1650), and the county governments of the same. (Consult preceding chapter.)

2. Is it true that the local governments of the colonies had a greater

influence upon the American government of to-day than did the central governments of the colonies (§§ 112–115)? Give reasons for your answer.

3. Why was county government first adopted in the West? Howard, *Local Constitutional History*, pp. 135–156.

Practical Question

1. From what State did most of our early settlers come? Have any important changes occurred in our local governments recently? If so, what ones?

CHAPTER IV

TOWN AND COUNTY GOVERNMENT

49. Local Government in the United States. — At the present time, we have three types of local government in the United States: (1) the town type, (2) the county type, and (3) the compromise type. In the six New England States, the town with its town meetings still looks after all of the important local needs of the inhabitants. In the South, the counties and their officials take full charge of local affairs, for many of the counties are scarcely subdivided even into school districts. But in the majority of the States, the compromise system prevails, each county having townships with a few unimportant duties, while all of the other local public business is transacted by the county officers.

The three types of local government.

In studying local government, we must never forget that our local governments are but parts of the systems of state government. The local governments derive their authority, not from the people of the localities, but from the people of the whole State. The local governments are, therefore, one set of agents carrying out the wishes of the people of the States; the other set of agents being the central governments of the States, which are discussed in Chapters IX to XVI of this book.

Interdependence of state and local governments.

County Government

50. The Character of the County. — Every State is divided into areas called counties of a size suitable for applying

A political subdivision of a State.

state laws. In a new State the location of county boundary lines is arranged by the legislature. After boundaries have once been fixed and the county seats selected, a legislature cannot arbitrarily move a county seat nor divide a county into two or more counties, as the population becomes more dense, but must first obtain the consent of the voters of the original county to the change.

Counties are public corporations.

In order that public business may be transacted, power is given the counties as public corporations to acquire land at the county seat for the erection of a courthouse, a county jail, and other necessary buildings, to assess and collect certain kinds of taxes, to collect their debts and enforce demands by bringing suit against individuals or private corporations, and to sustain suits if any one has a claim against them.

Small counties and no townships.

51. The Southern County. — As townships do not exist in the South, or are of so little importance that they are scarcely worth considering, the county officials are obliged to look after matters left in the other States to both the towns and the counties. This task is made easier by the small size of the Southern county. In Kentucky, for example, the average area of the 119 counties is less than 340 square miles, while in Minnesota the average county is three times as large.

County officials in the South.

Just as in Virginia in colonial times, the chief county officers in some of the Southern States are justices of the peace, who are judges at one time and who form a county board at another. Most of the Southern counties, however, are now governed as in most of the other States by commissioners, aided by sheriffs, county clerks, assessors, tax collectors, treasurers, and others. The duties of officials bearing these names are much the same in the South, the North, and the West, for only in New England, where the

counties are overshadowed by the towns, is the work of the county unimportant.

52. The Selection of County Officials. — It is difficult for us to realize now that less than a century ago, almost if not quite all of the county officials were appointed by either the governors or the legislatures. Nowadays the important places are filled by popular vote, and the lesser ones through appointment by the people's elected representatives. The state government usually decides what county offices there shall be, what duties belong to each, and what salary each carries with it, but it cannot interfere with the people's choice of their officials.

Increase in number of elective officials.

Almost all of the officials mentioned in the following sections are elected by the legal voters of the county for periods of two, three, or four years. Their compensation varies greatly in different parts of the country, but is on the whole more liberal in proportion to the magnitude of their duties than is that of the state officials.

Terms and compensation of county officials.

53. The County Board. — Every county has a supervisory body which makes most of the county ordinances and oversees the actions of the other officials. The members of the county board may be known as commissioners, supervisors, justices of the peace, or by other names. They usually number only three or five and are elected either from the whole county, from districts into which the county is divided for the purpose, or in some States from the townships. As a board their chief duties are to divide the county into school and road districts and even into townships, to lay out public highways, to construct bridges, to look after the poor, to erect public buildings, and most important of all, to determine the amount of money needed by themselves and others to do the work of the county, and to supervise its expenditure.

Composition and duties.

County judges are both local and state officials.

54. The County Judicial Officials. — The county judges (§ 194) are in a sense state judges, because they are chiefly concerned with cases arising under state laws and are under the supervision of the state government. In another sense they are local officials because they are ordinarily elected by the voters of the county and are paid out of the county treasury. The number of the judges and the kinds of cases they may try depends upon the population of the county and whether there are still lower courts within the county.

The sheriff.

The decisions of these courts, and of all higher state courts, that must be executed within the county, are carried into effect by the *sheriff*, who, by virtue of this duty and the more general one of maintaining peace and order, is the most powerful of the county officials.

Assessors and collectors.

55. The Financial Officers of the County. — Most of the revenue needed to maintain the government of an American county is derived from the general property tax (§§ 100–105). This is usually assessed by township assessors, but is paid to county tax *collectors*. When collected the tax money is turned over to the *treasurer*, who places certain amounts in the general fund, in the highway fund, the school fund, and various others, in accordance with instructions from the county board. This is not paid out except upon written order from the *auditor*, or of the county clerk in some States. If a school janitor is to be paid, he first receives from the school trustees a warrant or demand which will be cashed by the treasurer when the auditor indorses it, or issues for it a new demand.

Duties of treasurer and auditor.

Duties performed.

56. Other County Officials. — The records of the county board, the proceedings of the courts, and other official papers, are preserved by the *county clerk*. When a suit in which the county is interested, or a criminal case is being

tried in the county courts, the interests of the county are represented by the *attorney* or his assistants. Upon the county *superintendent of schools* devolves the task of visiting schools and regulating the county school system, and often of superintending the distribution of school moneys. The *coroner*, with the aid of a jury, investigates the causes of violent or mysterious deaths. All deeds, mortgages, and other business papers for whose validity a record is necessary, are copied by the *recorder*. Many States have county surveyors to look after the public lands, separate overseers of the poor, public administrators who take charge of the estates of persons dying without wills, and other officials.

Town Government

Two types of town government.

57. General Character of the Town. — There are in the United States two distinct kinds of towns. One of these does much or most of the work consigned by the state government to the localities, and is a public corporation, with the right to do business in the courts and outside in a corporate capacity. The other, more often called a township, has so few duties that it is scarcely considered necessary to grant it the power of a corporation, as it is merely a convenient area for the lowest courts and possibly for school or tax purposes. The first type of town is found fully developed only in New England; the second exists most commonly in the extreme West and in some of the Southern States.

Composition and powers.

58. The New England Town Meeting. — The essential feature of New England town government is the mass meeting of the voters, held at least once a year in the town hall. At the town meeting the men elect public officers, vote taxes, authorize important enterprises, and express

approval or disapproval of the acts of the town officials during the preceding year. The voting citizens are thus enabled to keep in close touch with the public activities of the town and to insure a careful if not a successful management of public affairs.

Selectmen, school trustees, clerk, assessors, and others.

59. The Town Officials in New England at least are very numerous, as the town must perform work that in other sections is left to the county. The town in its corporate capacity is represented during the intervals between town meetings by the selectmen who have general oversight of town affairs. They number three or nine and are elected usually for three years, but sometimes for only one. Next to them in authority are the members of the school committee, one third of whom retire each year. As most of the state and local taxes are collected in the towns, the assessors hold very responsible positions, while the tax collector, the auditor, and the treasurer, the town clerk, and the constable, who are elected yearly at the town meetings, are equally well occupied. To the overseers of the poor and to the overseers of the highways are assigned duties performed in most of the States by the county boards and their assistants.

The New York town.

60. The Townships outside of New England. — In New York and in two or three of the Northwestern States, town meetings are held usually for the election of officials, but the duties and powers of the meetings are exceedingly limited, although the town officials may be numerous and their powers quite extensive.

Western and Southern towns.

In the other States, when townships exist at all, they are usually districts with judicial officers, constables, overseers of the highways, and school boards only. As already stated, in most of the newer States these townships coincide in area with the rectangular congressional townships, whose evolution as a self-governing district was described in § 48. In

some parts of the United States, moreover, there are no important political divisions of the counties except the school districts. These may have overseers of the poor and the highways, as well as school trustees, and are after all undeveloped towns in fact if not in name.

General References

Wilson, *The State*, §§ 1209–1259.

Macy, *Civil Government*, pp. 41–114.

Ford, *American Citizen's Manual*, pp. 53–83.

Howard, *Local Constitutional History of the United States*, especially pp. 162–238, 438–470.

Topic

THE NEW ENGLAND TOWN: Channing, *Town and County Government in the Colonies*, Johns Hopkins University Studies, II, pp. 459–474; De Tocqueville, *Democracy in America*, I, pp. 74–86; Howard, *Local Constitutional History*, pp. 62–99.

Studies

1. State the principal differences between the three types of local government. Macy, *Civil Government*, pp. 107, 112–114.

2. What degree of home rule, *i.e.* freedom from legislative interference, do the towns and counties possess? Ashley, *American Federal State*, § 469.

3. What is the relation of the localities to the State? Ashley, *American Federal State*, §§ 466–468.

Practical Questions

1. What is the difference between a private corporation and a public one? Dole, *Talks About Law*, pp. 251–253.

2. How many counties are there in this State? How do they compare in area and population?

3. In what county do we live? What is its area? its population by the last census? What is the county seat? Is it centrally located? Is it the largest city in the county?

4. What name is given to our county board? How many members

are there on it? Are they chosen in towns, in districts, or from the whole county? Name their principal powers.

5. What is the term of the elected county officials? Are all chosen at the same time? Are any county officials appointed by the state government?

6. What is the salary of the county clerk? How long has he held the position? Has he few or many assistants? State as fully as possible his duties.

7. What is the main political subdivision of this county called? How many are there in the county? Are they public corporations? What officers has each? Do they ever hold meetings of all of the voters within the district? If so, when and for what purpose?

8. If living where the town is important, answer the following: What are the boundaries of our town? its population? What are the chief events in its history? How often are town meetings held? Give the composition and duties of the town board, stating term and salaries of the members. What other officials has the town? Do the voters of the town elect any county official?

9. Make a table in your notebooks, giving a list of the chief offices of the county, and showing the name of the present incumbent, the term of his office, and the salary he receives.

CHAPTER V

THE WORK OF RURAL LOCAL GOVERNMENT

Local officials have numerous administrative duties.

61. Introductory. — Our local governments are chiefly occupied with the administration of laws made by the state legislature and of ordinances passed by the county and town boards. Few of the local officials are called upon to deal with great questions of public policy, but all are obliged to devote their attention to a multitude of details in caring for the health of the people, in laying out roads and constructing bridges, in maintaining public schools, in arresting and punishing lawbreakers, in keeping records of all public business, besides looking after numerous other matters of more or less importance.

The Public School System

Difference between the district and township school systems.

62. Township and District Schools. — There is no task of local government which outranks in importance that of providing a common school education at public expense. The amount of care and money devoted to the maintenance of public schools in America is evidence that the local governments do not intend to be found wanting in performing their duty of educating our youthful citizens. In some parts of the United States, the counties are divided into small districts each of which has its separate school board and a school or schools under a management separate from those of the surrounding districts. In other States, the

Advantages of the township system.

schools are maintained by the townships, each of which usually has several schools in its charge. The township system has the advantage, in well-settled districts, of giving larger and better graded schools with more perfect supervision of the teachers and the school work. The establishment of high schools and school libraries is much easier and much more successful in townships and in large districts than in districts with single schools. For these reasons the single district system is gradually being supplanted in the more progressive States.

Provisions of the state school law.

The minimum length of the school year, the subjects which must be taught in the different grades, the way in which teachers' certificates are issued, besides many other general regulations are prescribed by the state school law or the state board of education (§§ 179,180). Most schools do much more than fulfill these minimum requirements, and even the poorer districts are sometimes enabled to do so when part of the money for the schools is raised by a state tax (§ 64).

Duties of county school boards and of school trustees.

63. Local School Administration. — The officials who look after school matters are usually three trustees for each district or township, and above these the county board of education and the county superintendent. In all of the States in which townships do not exist or are not well developed, the county boards are given important duties in granting certificates to teachers, selecting text-books for the county schools, providing for uniform courses of study, and raising money for school purposes. In most of the other States, the burden of school duties falls upon the trustees of the districts or townships, who almost invariably have charge of selecting teachers, and of erecting school buildings, and who may be obliged to assume part or all of the tasks mentioned above in addition.

The selection of teachers.

A custom which is practically uniform throughout the country, and which is, perhaps, more than anything else, re-

sponsible for inefficiency in the schools where that exists, consists in electing new teachers for a term of one year only and of dismissing them without good reason, often to make way for some friend of a new trustee.

Congressional school grants.

64. School Finances. — Our schools are, nevertheless, quite efficient on the whole, and the public interest taken in them is shown by the large sums expended annually. The aid given by Congress to the newer States has undoubtedly exerted a healthful influence in quickening this popular interest. Ever since 1802 Congress has given as the basis of an educational fund to each of the States formed out of the "public domain," *i.e.* the land directly controlled by Congress, one section of the thirty-six in each township (see § 299), and since 1848, two sections. These have been sold and the proceeds devoted to developing the schools in these States. By far the larger part of the school revenue is, however, obtained from taxation. Many States collect state school taxes and then distribute this sum to the counties or townships in proportion to the number of scholars in each who attend school regularly, and in this way help the poorer districts and those which are most earnest in their school work. In most of the States, the taxes are purely local and are as large as each community thinks it needs and can afford.

School taxes.

Local Police Duties

Means and success of suppressing disorder.

65. The Preservation of Order. — It is usually a matter of local pride that laws should be enforced and order kept within a locality, since the States do not maintain a state police, but leave the protection of life and property to the local officers. Each county has a sheriff who is aided by several deputies, and who may call upon citizens to aid him if extra assistance is needed to quell disturbances. There

are usually in addition township constables who serve warrants and arrest offenders. In rural communities these duties are not often arduous, unless public sentiment is on the side of the lawbreakers.

Jails and the occupations of their inmates.

66. Local Reform Institutions. — For the punishment of persons convicted of crime, most localities have erected jails or penitentiaries to which criminals are sentenced for a period of several months or years, those convicted of serious offenses being sent to state prisons (§ 184.) These persons are kept at work, sometimes within the jail, sometimes on a chain gang watched by armed officers, and occasionally by being delivered in a body to contractors who pay a certain sum per head for their services and are given absolute control over them.[1]

Conditions under which the sale of intoxicants is permitted.

67. The Granting of Liquor Licenses is one of the duties left to the local police board and officials, although the law which determines whether the license shall be "high" or "low," or whether saloons shall be prohibited entirely from a given district, is made by the state legislature or prescribed by the state constitution. Licenses are usually granted only upon certain conditions, the chief of which is the payment of a license fee which may be as low as fifty dollars a year or as high as one hundred dollars a month. They are not ordinarily given for saloons near churches or schoolhouses. Many localities prevent the sale of liquor to minors and compel the dealers to close their saloons on Sunday, but even when the state law provides for these regulations, they are not enforced unless the general public really so desires.

68. Prohibition and Local Option. — At present three States[2] prohibit the manufacture and sale of intoxicating

[1] This "lease system" has given rise to great abuses in the treatment of the prisoners, and is therefore used less than was formerly the case.

[2] Maine, Kansas, and North Dakota.

PREPARING THE MATERIAL.

PREPARING THE ROADBED.

BUILDING A MACADAM ROAD IN THE SOUTH.

(From the *Yearbook, U. S. Dept. of Agriculture*, 1901.)

liquors within their borders. Over one half of the other States permit any county, township, or village to decide by popular vote whether it will have local prohibition, thus giving it what is known as "local option." It has been found difficult to enforce the prohibition laws where any community is not actively in favor of prohibiting the sale of liquors, so that on the whole local option, giving the localities the right to decide for themselves in the matter, has been found more successful than "state-wide" prohibition.

Relative success of the two systems.

Miscellaneous Functions

69. The Care of the Poor. — So far as charity has become public at all, it is the duty of the localities rather than of the state governments. As we should naturally expect, in New England it is the towns and in the other States usually the counties that maintain poorhouses and poor farms. Often there are hospitals separate from the poorhouses, but more often simply a department of that institution.

Local charitable institutions.

In addition to the care of the needy and unfortunate in public institutions, a great deal of help is given by means of outdoor relief. Especially in winter or when work is scarce, this assistance becomes very necessary. The chief objection to outdoor public relief is the comparative ease with which the authorities may be imposed upon by unworthy individuals. This form of charity is therefore generally left to private parties and organizations.

Outdoor relief.

70. Rural Roads and Bridges. — The task of laying out and improving highways and of constructing bridges is always delegated to local authorities, usually the county board, the town board, or special highway officials. When a road is needed in a particular section, a right of way is obtained from the owners of the property that is crossed,

Process in opening roads.

if possible at a price acceptable to the owner and the officials. If they disagree concerning the value of the right of way, the government exercises the right of eminent domain, which permits some court to condemn the property and to appoint referees to fix a reasonable price upon it. Roads may also be laid out at the request of a certain per cent of the property owners in the neighborhood. The cost of the property required for the road, of grading it, and of surfacing it, is usually borne in the form of a road tax by all the property owners of the road district in which it is located. In many parts of the United States, farmers are allowed to "work out" their road taxes, contributing a certain number of days' labor with or without teams. This custom is becoming rarer, for roadmaking is now being reduced to a science. Since good roads are in the end found to be more economical than poor ones, the surfacing of the highways is now quite frequently left to engineers and their assistants.

The methods of improving rural roads.

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2. The prevalence of the school district system. A. S. Draper, in Butler's *Education in the United States*, pp. 7–11.

3. The consolidation of rural schools. F. Nelson and W. B. Shaw in *Review of Reviews*, XXVI (1902), 702–710.

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7. If "Sunday closing" laws are not enforced, should they be repealed?

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Practical Questions

1. What are the boundaries of this school "district"? How many schools are located in it? Learn the number of teachers, the total attendance of scholars, and the cost of running the schools.

2. How many members are there in our school board? Do all go out of office at the same time? Is it the custom to reëlect these officials?

3. Who issues teachers' certificates? Of whom do our teachers get their pay?

4. To whom do we go to get a warrant and have any one arrested?

5. What is the principal county building called, and what does the name indicate regarding the chief duties of counties?

6. Have we high license, low license, or prohibition? Is local option permitted in this State?

7. Are our roads laid out and cared for by district, town, or county officials? Are the roads of this section well located? How are most of them improved?

8. What is meant by the title of a piece of property? by an abstract of title? by a certificate of title? by a deed? by a mortgage? Are copies of any of these kept by town or county officials? If so, which ones, and by whom?

CHAPTER VI

CITY GOVERNMENT

Different uses of the word "city."

71. Eastern and Western Cities. — There is quite a difference between the meaning of the word "city" in the East and in the West, for, in many newer sections of the United States, many places are dignified with the name of city which in the East would be called villages. The governments and the problems of these small Western cities are very similar to those of the incorporated villages of the older States, mention of which will be made later (§ 87). This chapter and the next really treat of the larger cities whose population is confined within a comparatively small area. There is a fair degree of uniformity throughout the country in the methods of municipal government, and the same problems confront the cities of the Atlantic border as in the Mississippi Basin and the far West.

Development of City Government

Degree of growth.

72. The Wondrous Growth of our Cities. — We can appreciate the importance of city government if we realize that one third of all the people of the United States live in cities of over eight thousand, whereas twenty-five years ago less than one fifth of our population dwelt in cities.

Reasons for growth.

The chief motives influencing this migration to urban centers have been the increased opportunities of business advancement which a city offers, and the social and educational advantages found there. Because of the many calls

which city life makes upon the time of its people, less chance is given the voters to interest themselves in the way the government is conducted. Since they do not become acquainted with their neighbors as in the country, the candidates even for the ward officers are probably unknown to ninety-five per cent of the voters. The indifference of the people to city affairs, due to these causes, is increased by the lack of great public questions in connection with the municipal government. The vast number of details with which city officials are concerned, from their very complexity, make supervision of city administration by the voters all but impossible. It is well known that our city governments have often fallen into the hands of men whose sole business is "politics," and whose care for the public welfare is less marked than their devotion to private interests. This is the more unfortunate because the regulation of a city's business involves the expenditure of a much greater amount of money in proportion to the population than does the county, the state, or the national government, so that all citizens ought to be vitally interested in having their city's government as perfect as possible.

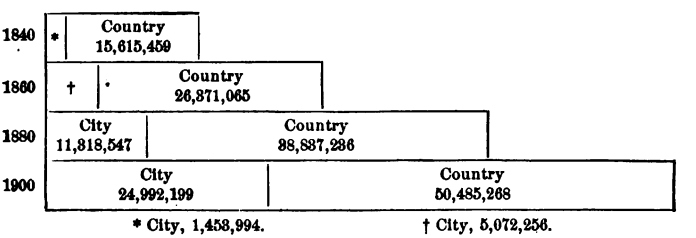

DIAGRAM SHOWING GROWTH OF CITIES

(The city population includes incorporated places of 8000 or over.)

73. Historical Changes in City Government. — We may distinguish three periods of municipal development: (1) The earliest "Colonial" period.

may be termed the colonial period, though it persisted till perhaps fifty years after independence was declared. The cities were governed under charters granted first by the king or royal representative, and afterward by the state governors. Full powers were given and exercised by a single body, composed usually of councillors, mayor, and treasurer, all of whom had legislative, judicial, and executive duties. As a rule, the councillors were chosen by a select set of voters, the mayor and treasurer being appointed by the state governor.

"Democratic" period.

(2) The second period was one of reorganization upon a democratic basis. Charters were now granted by the legislatures and revoked or modified at will. Separation of the departments, already begun, was completed. Popular election was substituted for appointment in the selection of most administrative officials, and the council was gradually stripped of its more important duties.

Present period.

(3) The third period marks the complete supremacy of the state legislature in city affairs. It is almost needless to say that this stage still exists. The council has been still further reduced in strength, its legislative rights being largely assumed by the State, in spite of constitutional restrictions upon the passing of local and special laws. Administrative power is being concentrated more and more in the hands of the mayor, with the hope of obtaining greater efficiency and responsibility, while recently a decided effort has been made to give the municipality, as a whole, a larger sphere of action.

The Charter and the Council

Present method.

74. How Cities are Incorporated. — All cities are public corporations created under state municipal laws. Upon petition from a certain number of voters living within the district that desires a city government, a special election is called at which an opportunity is given to vote for or against incorporation. If the vote is favorable, the city obtains from the state government a charter under which it may elect its officials and conduct its business.

Historical methods.

Formerly cities were incorporated by special laws and not under general ones, *i.e.* the legislature passed a special incorporation act for each city. Now there is usually a uniform law, whose provisions must be observed in order to obtain incorporation. This ordinarily states

the minimum population, makes arrangement for the boundaries and other details.

75. The Granting of Charters. — For the sake of convenience, we may consider the granting of charters under three heads. (1) In most of the States, the legislature passes a series of charter laws for cities of different sizes. That is, forms of charters are enacted for different classes of cities. For instance, all cities whose population is over one hundred thousand may be called cities of the first class, those having between twenty-five thousand and one hundred thousand, cities of the second class, and so on. All cities that, by virtue of their population, are of the second class, have charters of the second class which may be amended or revoked in their entirety by the next legislature.

General charter laws.

(2) In other States, the charters are still granted by special act. Instead of having different classes, each city is in a class by itself, and each charter is therefore different from every other, although all are given to the cities by the legislature and not adopted by popular vote.

Special charters.

(3) Four States, Missouri, California, Washington, and Minnesota, permit their cities to elect charter committees, which frame suitable charters. If these are approved by the voters of the cities, they are ratified by the state legislature and are then in force.

Charters framed by citizens.

76. The Character of a City Charter. — The charters serve the same purpose for the cities that the constitutions do for the States (§ 133), that is, they are the fundamental law of the cities. The most important part deals with the frame of the government for the city, showing the composition and powers of the city council, as well as the term and duties of the mayor and other administrative officials.

The fundamental law of the cities.

77. The Organization of the Council. — As a rule, the councils of our cities are small bodies of from ten to twenty

One chamber councils the rule; two chambers the exception.

members comprising a single chamber, although in about one city in four, there is a second chamber, just as in the state legislatures and in Congress. The members of the larger of these two bodies, and of the single chambers of the other cities, are elected from wards for a term of from one to four years. For the upper chamber, the members are usually chosen for longer terms, not exceeding four years however, and are occasionally elected from the whole city, or from large districts, each of which elects several of these "aldermen." In many of the cities, the council, or at least one chamber of it, is a "continuous" body, one half of the members retiring at a time. In the majority of American municipalities councilmen serve without pay; in the other cities their compensation ordinarily depends upon the number of sessions held.

Philadelphia has the largest council in the United States, its upper chamber numbering 42 and the lower 162. For the city and county of San Francisco, the only legislative body consists of 18 "supervisors."

Powers enumerated in the city charters.

78. The Powers of the Council. — The council is not allowed to exercise any power unless that particular power is mentioned in the city charter.[1] The list of enumerated powers is apt to be quite a long one, giving the council the right to construct public buildings and make ordinances for controlling the streets, preventing disorder, regulating licenses, caring for the health of the community, and for many other matters of local interest. The council is usually the chief financial organ of the city. To it estimates of the expenses of the different departments are furnished, by it appropriations are voted, and provision made to meet the expenditures through taxation or other forms of revenue.

[1] In many cities the charters give the councils the right to pass ordinances that are necessary for the general welfare, and which are not contrary to the constitution of the State and the United States.

City Hall, St. Louis, Mo.

Public Library, Boston, Mass.

(See § 93.)

When it becomes necessary to borrow money, the council is authorized to issue bonds for the necessary amount, although sometimes only after securing the approval of the voters. When a company applies for a franchise to lay a street railway, or furnish telephone service or gas to the people, the application is made to the council, but in some cities it is not permitted to grant franchises without first gaining the consent of the voters.

Municipal Administration

Mayors with very great powers.

79. Two Kinds of Mayors. — An attempt has been made in some cities, during the last two decades, to remedy the defects of municipal government by concentrating in the hands of the mayor the absolute control over most of the administrative officials of the city. Instead of having a great many officials elected by the people, or appointed by the council, as was formerly the case, the mayor is allowed to select and remove most of these subordinate executive officers. He has consequently been held responsible for their acts, in the cities where he has this power over them, and rightly so, for they must do as he wishes, or he may remove them. This is the first kind of mayor.

Mayors with ordinary powers.

The second kind, still to be found in a great majority of our cities, has general supervision of city administration, but he cannot control the actions of any one except himself and his immediate subordinates. He is aided by associates or colleagues, all of whom are independent of the mayor, for they are chosen without consulting him, and usually cannot be removed at all.

Legislative and administrative powers.

80. The Mayor with Ordinary Power, a mayor of the second kind, is usually elected for a term of two years by the voters of the city. As he is not called upon to ap-

point many officials of prominence, his chief power is his influence over the council. At the beginning of each year, he sends to that organization a message, showing the condition of the city's finances, and recommending changes in the departments or their work. But it is his right to veto bills that gives him his greatest power. To pass a measure over his veto, a two thirds vote of the council is necessary, so that the overruling of his veto is very rare.

Reasons for granting mayors great power.

81. The Mayor with Extraordinary Power. — Those cities which have been able to offer their mayors large salaries and considerable power, have succeeded in securing as candidates for the mayoralty men of exceptional ability and business standing. By thus awakening popular interest, a long step has been taken toward securing good government, irrespective of any benefits in the new method adopted.

Control exercised over the administrative officials.

Mayors of this type exercise the same powers as the other mayors, and, in addition, have the right to select, usually with the consent of the council, not only the heads of the different administrative departments, but others such as the city clerk, the treasurer, and the city attorney. In a very few cities, all of the mayor's appointees may be removed by him for cause at any time, but there are frequently restrictions upon this power. Whether this concentration of powers in the hands of the mayor will ultimately prove a blessing, we cannot say; but, judging from the success of the national administration (§ 370), in which the executive power is centered in the President, it is likely to be more effective than the older system.

Board of estimate.

82. Financial Methods in "Reformed" Cities. — These mayors are often given greater financial powers than the ordinary mayor possesses. In rare instances, the mayor and three of his appointees, with the auditor (an elected official), form a board of estimate which decides how much money is needed to meet the city's expenses. This estimate

is sent to the council, by which it cannot be amended in any important particular. In many cities in which this extreme form of concentration does not exist, the mayor is often allowed to veto particular items in appropriation bills. To pass a financial measure over the veto, a vote of three fourths or four fifths of all the councilmen is essential.

Elective officials.

83. Election of City Officials. — Besides the mayor and the councilmen, an auditor, an engineer, an assessor, a tax collector, and members of a board of education are usually elected by popular vote. Formerly, the city elections were commonly held at the same time as state and congressional elections. As a consequence, the nominations for city offices were of a distinctly partisan character, and it was almost impossible to select candidates upon their merits. After some agitation, the fact became generally recognized that there was no necessary connection between city government and partisan politics, and that the separation of the city elections from the other elections was essential to good city government. This separation has now been accomplished in most of our cities.

Separation of city and state elections.

Composition and powers of city school boards.

84. The School Department. — City school boards are composed of representatives from the wards, except in a few cities where the members are elected by all the voters within the city or are appointed directly by the mayor. All local regulations for the schools originate with these bodies, which elect the superintendents and all of the teachers. Most of the cities allow their boards to expend school moneys, so that they decide what the teachers' salaries shall be, keep the school buildings in repair, and erect new ones as they are needed.

Organization of police, fire, and health departments.

85. The Departments of Public Safety. — To preserve the peace and maintain the public health, there are, in every city, police, fire, and health departments, which are often entirely independent of each other. Sometimes these

departments are united into a single department of public safety, whose bureaus have charge of these functions. In most cities each department has a board, whose executive officer is a chief, with full power to carry out the ordinances made for his department by the council, or by the board.

The large number of departments.

86. Other Administrative Departments. — Among the other departments for administering city affairs are those that look after the streets, the parks, the libraries, the waterworks, public lighting, and probably a dozen other matters. These may have boards, but usually are managed by commissioners appointed by the mayor or the council. The employees in these departments, and in the four just considered, are much more numerous than would at first be thought possible. As most of the positions can be properly filled only by persons of considerable skill, the methods used in selecting employees are of the first importance. If the members of the library board may remove any of the library assistants whom they please, and appoint their own friends irrespective of training, the public library will be of little value to the citizens. It has seemed, therefore, necessary to have certain rules to regulate the appointments and removal of city employees. For teachers and librarians, a course of training is prescribed, often by state law, while for policemen a certain minimum physical standard is made obligatory. Very little has been done to establish a regular civil service in which appointments shall be made exclusively on the ground of merit or removal solely for incompetency, but there is good reason to hope that the popular interest taken in this subject will lead to some improvement, without which good government is impossible.

Need of selecting city employees solely on ground of fitness.

Some idea of the number of employees may be given by stating that, in 1900, there were 7637 policemen on the pay rolls of New

York, that the same year Boston employed 730 firemen, and Philadelphia 5736 school teachers.

87. Village Government. — When the population of any rural district becomes fairly dense, the voters may petition to have a special election called in order to determine whether the district shall be incorporated as a village. If the vote is favorable, articles of incorporations are drawn up in accordance with the law of the State. These articles state the boundaries of the village, as well as the number, terms, and powers of the village officials. Chief among the officials are the members of the village board, corresponding to the city council, whose presiding officer is "mayor" of the village. Other duties are performed by the clerk, the treasurer, the assessor, and the overseers of the poor. These village governments are therefore quite similar to those of the cities, although their tasks are less numerous and much easier to solve.

Incorporation of villages.

Village officials.

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Studies

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2. Should councilmen be elected by wards or from the whole city?

3. The Brooklyn system in operation. S. Low, in Bryce's *American Commonwealth*, abridged ed., pp. 434–439.

4. Why is civil service reform so necessary in city government, and what has been done to give this to our cities?

5. What separate municipal courts are now in existence? Wilcox, *City Government*, pp. 214–225.

Practical Questions

(For city pupils only)

1. What was the population of this city, according to the last census? What was the percentage of growth during the previous decade? What is the area of the city?

2. What date does the present charter bear? Was it given to the city by the state legislature? How may it be amended?

3. Is our council composed of one or two chambers? How many members are there? What is their term of office? Are they elected by wards? What are the chief powers of the council? With what body does the control of the city finances rest?

4. Has our mayor extraordinary or only ordinary power? What is his term? his salary? What officials does he appoint?

5. What other officials and what boards are elected by the voters? How is the police board chosen? the board of health? Have we a board of public works? Is there a civil service commission in this city to examine applicants for positions?

CHAPTER VII

WHAT THE CITIES ARE DOING FOR THE PEOPLE

88. The Extension of Municipal Activity. — There has been a decided tendency in recent years for all of our governments to undertake a larger number of duties, and this tendency has been more marked with our city governments than with any of the others. Yet even with this great extension of municipal functions, American cities do much less for their people than those in all of the most progressive European countries. It does not seem probable, however, that the street railways of the United States will soon become public property, or that many of our cities will maintain pawn shops, as some foreign municipalities do.

Municipal activity increasing, but municipal enterprises still uncommon.

We may classify the duties performed by our cities as *necessary* or *business* duties. By necessary duties are meant those which are invariably performed by American municipalities. The business functions include the business enterprises which are either undertaken by the cities or performed by private parties with the consent of the cities.

Two kinds of municipal duties.

The Necessary Work of a City

89. The Suppression of Disorder. — It is a fact of common observation that there is a great deal more crime in cities than in the country. This is not so much the fault as the misfortune of great centers of population, for they become the haunts of hardened characters chiefly because it is easy

The large number of criminals in cities.

to escape detection in a multitude. Each city must therefore maintain a police force that will be large enough to preserve order, keen to detect crime, and eager to bring offenders to justice. Among the ordinances that policemen are expected to enforce are those relating to nuisances, street obstructions, and excise laws. When a city wishes to have its saloons closed promptly at midnight and all day Sunday, it finds this impossible without an incorruptible police force, fully supported by public sentiment. Unfortunately there have been instances where the guardians of the peace have agreed for a consideration to overlook violations of city ordinances or state laws.

Numerous police duties.

Precautions taken by health department.

90. Measures to preserve the Public Health. — When people are crowded together as in large cities, extra precautions are necessary to prevent the introduction and spread of disease. The health department, with its physicians and inspectors, has especial charge of all cases of contagious or infectious diseases, which are carefully isolated so that others may not be infected. When epidemics are raging, an entire city or some section of it is subjected to very strict quarantine to confine the danger within a limited area. So successful have these sanitary regulations become that the proportion of deaths from the more common infectious diseases is now very much smaller than a few years ago, while the terrible curse of smallpox has almost died out, owing largely to the use of vaccination.

Work of food inspectors.

Precautions of an entirely different order are taken by the milk inspectors to make sure that the milk sold is pure and free from preservative fluids; by the meat inspectors, who condemn fish and meat unfit for use; and by fruit inspectors, who perform a similar task with fruits and other perishable foods.

91. Means of influencing the Health of a City. — In

addition to these direct measures, all of our large cities find it necessary to use other means of preventing disease. An impure water supply, streets in which rubbish and filth collect, an imperfect or inadequate sewage system, have a direct bearing upon the city's death rate. This gives the water commission, the street department, and the sewage commissioners an important sanitary work to perform. The effect which the street department alone may have upon a city's health can be plainly seen in the wonderful work done in Havana in the three years the Americans controlled the government of that Cuban metropolis. To the plumbing and the building inspectors fall a share of this life-saving work, for in the slums of large cities particularly the enforcement of new building laws, making air and light shafts obligatory, has been a great blessing to the poor.

Sanitary work which may be performed by the street, sewage, and water commissioners.

The effect of good buildings laws.

92. The Care of the Streets.—One of the first duties of every city is that of caring for its streets. The right to lay out streets and to authorize improvements upon them is usually given to the council. A street is ordinarily cut through before the property appropriated for it becomes valuable, but at times it becomes necessary to open a new street or widen an old one at a great expense. If one person objects, whose property is needed for the opening of a street, the council must resort to the use of its right of eminent domain just as the county board does in laying out highways (§ 70). As the city grows, the streets must be improved, usually in such a way and at such a time as the majority of the owners of the abutting property may desire. The major part of the expense incurred in these changes is ordinarily borne by the city, the remainder being paid by special assessments upon the property on either side of the new street. The pavement is then kept in repair by the street department

Laying out streets.

Construction and repair of pavements.

and sprinkled by the sprinkling department, while the lighting department provides gas or electric lamps.

The non-enforcement of municipal contracts.

Street improvements are usually made by private contract, after the character of the improvement has been publicly advertised, and sealed bids have been presented to the council at an appointed time. The work of the successful contractors is inspected by the city's engineer and street superintendent, but the claim is frequently made that the contracts are not fulfilled, the work being poorly done, although the price paid by the city is higher than any individual would have paid for a similar service.

Grammar schools and special schools.

93. What is being done for Education. — Our cities are likely to have better opportunities for good schools than the country districts, because a more perfect system of grading is possible and because greater inducements are offered to teachers. To what extent these opportunities are utilized depends chiefly upon the public spirit of the school board. Most of our cities have, however, gone much farther than the laws require. Almost all have established free kindergartens, and high schools with many different courses of study. Some give instruction in manual training throughout the higher grammar grades and a few have established separate technical high schools.

Public libraries.

Few of our large cities are without public libraries whose books and magazines go into thousands of homes, and which usually seek in connection with the schools to develop a taste for profitable literature.

Large suburban parks.

94. Municipal Park Systems. — Nowadays a system of parks is indispensable to a progressive city. Immense sums of money have been spent in acquiring and beautifying large tracts, usually in the suburbs, where fine drives are laid out, artificial lakes arranged, groves of trees planted when necessary, and collections of animals or birds exhibited. In some cities small parks are to be found in central locations. In New York, playgrounds have been provided

in the most crowded parts of the slums by tearing down unhealthful rookeries. The same city has also built a number of pleasure wharfs for the benefit of those who cannot afford a trip to the country or to one of the seaside resorts. Public baths are managed by several of our municipalities.

Playgrounds for the poor.

The Business Functions of a City

95. The Water Supply. — Municipal ownership of water systems is now more common than private ownership in all cities of prominence. The need for a supply of pure water and the very slight cost of operating the water plant have probably caused cities to incur the great expense of constructing conduits a long distance, building vast reservoirs and laying an intricate network of pipes throughout their streets rather than leave the business to individual enterprise.

Municipal waterworks.

The majority of the cities whose water is furnished by private parties arrange in the franchises which they grant that at the expiration of the "life" of the franchise, the cities shall have the right to purchase the property at a reasonable cost, or for stated sums. A few have been so far sighted as to provide that when the franchises expire the water plants shall revert to the cities without extra cost. So successful has municipal ownership been, in the future the granting of franchises to water companies is not likely to assume importance.

Franchises granted to private water companies.

96. Gas and Electric Lighting. — A few cities have undertaken to furnish their own lights for the streets and public buildings. Some of these retain a monopoly of the lighting privileges within the city, *i.e.* the householders must obtain their lights from the municipal plant as no other has been established. With very few exceptions, only small cities

Municipal lighting plants.

have electric public works, while scarcely any have ever attempted to manage municipal gas works. The success of these undertakings in the smaller cities seems to indicate that municipal ownership will be more common in the future, especially as the separate private gas and electric companies of one place have often been consolidated after each had gained valuable privileges from the city. Monopolies of this character in private hands are objectionable both because of the use they are obliged to make of the public streets and the power which they possess over their customers.

Private gas and electric companies.

The transportation problem.

97. Transportation Facilities. — With the development of better means of urban transportation, the suburbs of American cities have been brought so near the business centers that congestion of population in the central wards is less necessary than formerly. This is a distinct advantage from almost every point of view, but it makes the problem of transportation an important if not a serious one. This is especially the case in those cities in which the control of all the street railways has been gained by single corporations.

Franchises for street railways.

Most of the street railways now in operation have been built and are being managed under franchises granted by the city councils for periods of from twenty to forty years. The privilege of laying one or two tracks upon specified streets is given for a certain number of years on condition that cars should be run every ten, fifteen, or thirty minutes, as the council considers necessary. At the time the privileges were granted, the companies might not have been able to carry out their part of the franchises and make a great profit, but very often in a few years a franchise has become worth an immense sum, no part of which has found its way to the city treasury. If in addition there has been

VIEW IN WESTLAKE PARK, LOS ANGELES, CAL.

(See § 94.)

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THE FIRST EAST RIVER BRIDGE, NEW YORK CITY.

(This bridge is one of the greatest municipal undertakings in existence. The railway vned by the city, but is under private management.)

a union of different companies which has avoided the expenses of competition, the cities may be obliged to suffer the inconveniences of poor service as well as to lose what should properly be theirs.

Shall cities own or simply control transportation facilities?

Two ways have been suggested of avoiding these evils. The first is to have the cities own and manage the street railways; the second to grant for a short term of years, franchises which give the cities control over the private companies, and which arrange to have a percentage of the profits paid into the city treasuries. The second method seems to be the more popular and the one more likely to be universally adopted.

Protection of city interests.

98. Conditions affecting Municipal Ownership. — For three reasons our cities must find the best means of dealing with this question of public utilities. (1) Our streets are public property and should be used solely for the good of the people. If permission is given to individuals or corporations to lay tracks or water pipes, or to erect poles that carry electric wires, the benefits accruing to the citizens should be in proportion to the privileges granted. (2) The cities should receive a net income from the use of the streets for these purposes, whether the business is conducted by the city or by private parties. (3) The citizens should have the benefit of good service at reasonable rates.

Monopoly and municipal ownership.

Whether these results can be best obtained by private or municipal ownership depends upon circumstances. If any of these business undertakings are naturally monopolies or become monopolies, the need of adequate municipal control, if not municipal ownership, has been proved by experience. When the original cost of the undertaking is large in proportion to the annual expense of operation, as is a system of waterworks, the advantages of public ownership are especially evident. On the contrary, any business of a

semi-public nature, in which the employment of large numbers of men is necessary, has been almost universally left to private parties, unless continued private ownership has been a menace to the welfare of the city. Even then, private management under public ownership has usually been advocated.

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2. The Chicago drainage canal. M. N. Baker in *Outlook*, LXIV (1900), pp. 357–360.

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Practical Questions

(These are intended for city pupils only.)

1. What are the duties of our police force, according to the city charter or ordinances? Have we a law for closing saloons on Sunday? Is it strictly enforced?

2. What was the death rate in this city the last year? How does it compare with preceding years? with other cities which are about as large as this?

3. How is a street laid out? What percentage of the cost of improving a street is paid by the abutting property? Do the property owners pay *directly* for having the streets before their homes sprinkled?

4. Is there more than one high school in this city? How many pupils attend it? Learn the number of pupils in all of the public schools of the city. What is the yearly cost of supporting the schools? Have we a public municipal library?

5. What are quasi-public corporations? Does this city own a system of waterworks? If so, when was it constructed or purchased?

6. By whom are street railway franchises granted? for how long, usually? Do the railways pay the city a percentage of their earnings? Are all under a single company, or are there competing lines?

CHAPTER VIII

LOCAL FINANCE

The work of local government involves great expenditures, especially in cities.

99. The Financial Needs of the Localities. — As the greater part of the work done by our towns, cities, and counties consists in the administration of state law or in the construction of local improvements, a great deal of money is required. Schools cannot be maintained without money for buildings, as well as for the payment of janitors and teachers. Highways and bridges are costly. The great expense of a police force, police courts, and buildings for the imprisonment of criminals show that a high price must be paid for the preservation of order, especially in cities. When we add to these items the cost of immense sewer systems, a vast network of water pipes supplied by large reservoirs, the cost of street paving and lighting, the expense of a fire department, and of a system of city parks, we readily see that the city governments are particularly expensive.

Investments and current expenses.

A part of these expenses is in the nature of an investment, as when, for example, a new city hall is built, or new bridges constructed, but most of them must be classed as current expenses. Part or all of the cost of any investment may be met by borrowing money, but the money for the ordinary expenditures must be obtained from the ordinary revenue, the larger part of which is derived from the general property tax.

The General Property Tax

100. The Character of the General Property Tax. — The general property tax, which is in such universal use for the support of the state as well as our local governments, is theoretically levied upon everything that possesses value. It is customary to say that one part of the tax is that assessed upon real estate, *i.e.* lands and houses, while the rest is upon personal property, including house furniture, stock of goods in stores, farm implements, horses and cattle, notes, bonds, and other forms of credit.

A tax upon all real estate and all personal property.

101. The Assessment of the General Property Tax. — In order to aid the assessors who determine the value of each man's property, every one that owns anything assessable is obliged to make out a written inventory of all his property, with an estimate of its value. He must swear that this inventory, known as a "statement," contains a complete and correct list of all his taxable wealth. With these statements in their possession, the assessor and his assistants make up the assessment rolls, showing the total assessable value of property within their district, usually a town or some other subdivision of the county.

Statements and the assessment.

Certain classes of property are exempt from taxation. In most States churches that are used exclusively for religious services are not taxed. Taxes are not paid upon school buildings or other public property. The list of exempted property often includes more than a tenth of all the property within a town or city.

Exempted property.

102. Difficulties in assessing Property. — There are certain difficulties inseparable from the assessment of any property. The assessed value of real estate must depend to a great extent upon the assessor's judgment, and, for that reason, it is difficult to secure a perfectly uniform assessment

Difficulties with real estate.

even by one man. But as no one person is likely to do all this work within a town, and as it would be absolutely impossible for all of the property within a county to be assessed by a single assessor, the danger that some individuals will be compelled to pay more than their share of the tax is indeed great.

Insurmountable difficulties with personal property.

With personal property, much more trouble is experienced than with real estate. A great part of this form of wealth may be easily concealed, so that the assessors are ignorant of its existence. As a rule the inequalities of assessment of personal property, and consequently of taxation between man and man, are very marked. In many states little attempt is now made to search out these more "intangible" kinds of property, and the personal property tax law is practically a "dead letter." A large number of States are seeking to reach this form of wealth through other channels, as we shall see.

Qualifications of a good assessor.

It must be perfectly evident that we need capable and upright men as assessors. There are few parts of the government's work that can affect us personally so much as a just or unjust assessment of our property, and to protect ourselves, as well as our neighbors, every care should be taken in the selection of these officials.

County boards of equalization.

103. The Equalization of Assessments. — In order to have the assessment of property in the different towns of a county as nearly uniform as possible, county boards of equalization have been formed. The principal work of the boards is to decide whether the assessors of any town have been too lax or too strict. If they find that any set of assessors has assessed their town too low, the assessment is raised to correspond with the others. The assessments from the counties are treated in the same way by the state board of equalization, which considers evidence to

determine whether the assessment throughout the State is uniform, and if it is not to make it as nearly so as possible. The chief difficulty that the boards of equalization encounter is the undervaluation of property within an entire county in order to reduce the state tax of that county to a minimum amount. In one State this process of undervaluation was carried so far that at one time no county's property was assessed at even one fifth of its value.

State boards of equalization.

104. The Payment of Taxes. — When the boards of equalization have completed their tasks, the tax rate for the coming year can be easily ascertained. The amount of money needed to run the city or county has already been established, and when this sum has been divided by the total assessed value of property within the city or county, the rate of tax upon every dollar's worth of property is known. All taxes not paid before a certain day become "delinquent," and a penalty of from one to ten per cent, besides interest at a high rate, is added to the amount of the taxes. If still unpaid, the government for which the tax was assessed allows any one who will pay the tax to collect the amount, giving him what is virtually a first mortgage upon the property at a high rate of interest. Because of these rigid regulations, the prompt payment of taxes is customary.

The tax rate.

Delinquent taxes.

State taxes are never paid directly to state officials, but to county, or in New England to town, officials.

105. Observations upon the General Property Tax. — The extent to which the general property tax is used must be taken as an indication of its value. Indeed the tax is quite satisfactory in those communities that have no large cities, and none of whose people are especially wealthy in other things than houses and lands. Unfortunately few of our States can be said to be of this class, for with the

The tax in agricultural communities.

The tax in industrial communities.

very great development of commerce and industry during the last two or three decades, the inequalities of wealth have become more striking. Our city population has meanwhile increased from one fifth to one third of the whole population. The present outlook is that the general property tax will be used much less by the state governments than formerly, although it is likely to be the financial mainstay of the localities for a long time to come.

Objections to the tax.

The principal objections to the general property tax may be stated as follows: —

(1) It is practically impossible to discover and assess "intangible" property through this tax.

(2) As a result of this failure, the farmer and the poor man pay more than their share of the tax.

(3) Because of the difficulties of assessing it over a large area, it is not a good state tax.

Other Forms of Revenue

Poll taxes.

106. Assessments and Poll Taxes. — In several States, all voters are obliged to pay poll taxes. The amount of the tax is the same for every person subject to it, irrespective of his ability to pay taxes, and the tax is accordingly an unjust one to the laboring classes. In a few of these States, no elector may vote unless he has paid his poll tax for the preceding year. The cost of local improvements is usually met in part at least by special assessments upon the property most benefited. In grading and paving a street, for example, the owners of the real estate on both sides of the street will be asked to pay for the improvement in proportion to the amount of their property.

Special assessments.

Liquor licenses.

107. Licenses. — A form of revenue of some importance is the system of licenses used sometimes by the States,

but much more commonly by the localities. The most profitable licenses, from the standpoint of governmental revenue, are those granted to liquor saloons. As a rule, fortunately, the question of high or low license has been considered not for its bearing upon the revenue of a community, but upon the public welfare. As would naturally be expected, the income from this source is greater under high than under low license. Licenses are usually made obligatory for many other kinds of business such as selling drugs and maintaining theaters, and sometimes for the ordinary professions and occupations. A great many licenses are however granted for little more than the cost of drawing the necessary papers, so that these really do not become a source of profit to the government.

Business and legal licenses.

108. Business Income. — Especially in cities, a part of the revenue is derived from business enterprises conducted by the government. Since many cities own their system of waterworks, the charges collected from the patrons add greatly to the municipal income. Where other public utilities are managed by the cities, as electric lighting, the municipal revenue is still further augmented. The net profit obtained from these sources is however likely to be small, as the business is usually conducted with a view of doing as much as possible for the citizens, rather than of making money.

Our governments do not run a business for profit.

The sale of franchises (§§ 95–97) is even now a help in paying a city's expenses. As the people come to realize how valuable the franchises are, it is likely our cities will obtain at least a small share of the profit made by private water, gas, and transportation companies.

Increasing revenue from franchises.

109. Borrowing Money. — It is hardly possible that any government will borrow money to meet current expenses. But when a city builds a number of schoolhouses, or a

Why it is necessary to borrow money.

county erects a new courthouse, it seems unjust to lay the whole burden of these undertakings upon the taxpayers during the year or two in which the work is being done. As authority to borrow money is ordinarily given to the different governments by the state constitution, it is usual to issue bonds at four or five per cent interest to the amount needed for the work. These bonds are sold publicly to the highest bidders, the government proceeding to collect in taxes yearly enough to pay the interest upon the bonds, and to set aside one twentieth, one thirtieth, or one fortieth of their face value, which goes into a fund for the redemption of the bonds at the end of twenty, thirty, or forty years.

The sale of bonds.

110. Restrictions upon the Right to Borrow Money. — About the middle of the last century, some of our state and city governments were so anxious to invest public money in private enterprises and to expend large sums upon public improvements that they incurred immense debts. To prevent the recurrence of this extravagance, the state constitutions have placed a limit on the amount of debt that any of its local governments may incur, and have prohibited the expenditure of money as subsidies to individuals or corporations. Very few cities in the country are allowed to borrow amounts that exceed five per cent of the assessed valuation of property within their boundaries, while the percentage limit for county and town governments is likely to be much lower.

The debt limits for cities and counties.

In a large and constantly increasing number of cities, the councils are not allowed to borrow more than a small sum of money unless they have first asked and obtained the approval of the voters at the polls.

The referendum for finance in cities.

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THE DEFECTS OF THE GENERAL PROPERTY TAX: Adams, *Science of Finance*, pp. 434–449; Seligman, *Essays in Taxation*, pp. 23–37; Ely, *Taxation in American States and Cities*, pp. 146–201.

Studies

1. What are the characteristics of a good tax? Cf. Ashley, *American Federal State*, § 575.
2. What is a progressive tax? Should any or all taxes be progressive? Why?

Practical Questions

1. Compare the assessment of real estate with that of personal property in this city or county. What property is exempt from taxation?
2. Look up for the city and county the total assessed valuation of property, the tax rate, the income from the general property tax, the income from the important sources.
3. For what three things was the most money expended last year by the county? by the city?
4. What is the amount of the city debt? Is there a limit to the amount of debt that may be incurred?
5. So far as you can learn, is property in this vicinity undervalued?
6. How does the total amount of municipal indebtedness in the United States compare with the national debt (Report of Twelfth Census)? Is the value of our municipal buildings and public works greater than the total amount of its debt?

STATE GOVERNMENT

CHAPTER IX

THE DEVELOPMENT OF OUR STATE GOVERNMENTS

Development of the state governments.

111. Introductory. — The state governments that we have to-day, with their separate executive, legislative, and judicial departments, are in form not very unlike the governments which existed in the different colonies before we became independent of Great Britain. The chief difference, as in the local governments, is that, whereas most of the officials were then appointed, they are now elected; that is, the governments have become more democratic. We must remember, however, that the colonial governments did not become fully developed until a great many years after the first English settlers came to America, and that, since 1776, there have been constant changes in the work undertaken by these governments, and in the methods employed in doing this work, so that we may say the state governments have been continually developing.

The Central Government of the Colonies

The three classes of colonies.

112. General. — There were three classes of English colonies in America: (1) the *Royal*, in which the governor was appointed directly by the King, and over which the King had direct and very great control; (2) the *Proprietary*, the governors of which were selected by proprietors, to whom the King had granted the land within the colony and cer-

tain privileges over its government; and (3) the *Charter* colonies, each of which continued to be governed in accordance with charters given them by English Kings. The two purely Charter colonies — Connecticut and Rhode Island — were virtually little republics, for the people elected the governors as well as the legislatures, whereas in the other colonies, the upper houses of the legislatures (except in Massachusetts), the governors, and the judges were chosen without consulting the people, and could not be removed or controlled by the people. Most of the colonies, however, had charters during the early part of their history, so that practically all had had some experience with these fundamental written laws which later grew into the written constitutions now found in all of the States.

In 1760, the only pure Charter colonies were Connecticut and Rhode Island. Massachusetts approached the Charter form, but had a governor appointed by the Crown. Pennsylvania, Delaware, and Maryland were Proprietary, the rest were Royal.

General and special powers.

113. The Colonial Governor. — The powers of the governor varied considerably in the different colonies, being greater in the Royal than in the Charter colonies. He had very great power in legislation, for he usually appointed the upper house of the legislature, and might be able to decide how many members each county or town should send to the lower or popular house of the legislature. Moreover, he had at all times an absolute veto upon any bills passed by both houses. All judges and most other colonial officials were appointed by the governor, and many important subjects that we should now leave entirely to the legislature were under his charge.

Term.

In the Royal and Proprietary colonies, the governors held office as long or as short a time as the King or proprietors wished, just as the judges of the same colonies held

office during the pleasure of their respective governors. In the Charter colonies, the usual term for the governors was one year, but as reëlection was the rule, the governors remained in office longer than the ordinary royal representative.

Composition of the upper houses.

114. The Colonial Legislature. — Except in three colonies,[1] the legislatures were composed of two houses. The upper houses, which were small, acted both as part of the legislatures and as governors' councils. In most of the colonies, the members of the upper houses were appointed by the governors, although in Connecticut and Rhode Island they were chosen by the people, and in Massachusetts by the lower house.

Composition of the lower houses.

The members of the lower houses of the legislatures, known as the assemblies, were everywhere elected for a term of one year by the voters of the colonies. Only a small proportion of the population voted at all, however, as the colonial laws required that a man be a Protestant and own quite a little property before he was given the elective franchise.

Early history.

115. The Development of the Colonial Assemblies. — The assemblies formed the popular branch of the legislatures, and their struggle with the governors for power was of especial value in the development of our present state governments. The first assembly to meet in America was that of Virginia, composed of two representatives from each of eleven towns or plantations, and elected in 1619. This and the early assemblies of the other colonies sat at first with the governor's assistants, taking little part in the discussions, and only gradually exerting an influence upon the making of laws. In time, by asserting themselves, they gained the right to sit apart from the assistants and to vote separately upon all proposed laws. That is, each assembly

Later history.

[1] Pennsylvania, Delaware, and Georgia.

formed a distinct house of the legislature. All obtained in addition the right to decide how much money should be raised by the colonies through taxation. Many of them tried also to gain the exclusive power to expend as well as to raise money, and some of them succeeded. In Massachusetts, for example, the assembly refused to vote a regular salary for the governor of the colony, but passed each year a bill appropriating an amount for his expenses. Before the Revolutionary War, these popular assemblies had made good their claim to a share in the colonial government not second to that of any other branch of that government.

Changes in State Government since 1776

Need of new governments (1775).

116. The Transition from Colonial to State Government. — When in 1775, the colonies objected to the way in which Great Britain attempted to govern them, and war broke out between the colonies and the mother country, some of the more unpopular of the royal governors and other officials found it necessary to flee to loyal British possessions. The assemblies in those colonies applied to the Second Continental Congress, then in session (§ 212), asking what they should do. Congress advised them, and later (May 15, 1776) advised all of the colonies, to form complete governments such as the people thought best suited to their needs. Acting on these suggestions, the assemblies either passed bills which arranged for new governments with which the King had nothing to do, or they asked the people to elect delegates to conventions whose sole work should be to make constitutions for the new States — for they were no longer colonies. Connecticut and Rhode Island simply kept the charters that they had used for over a century, with slight but necessary modifications, the former not adopting a new constitution until 1818, nor the latter until 1842.

Congressional resolution of May 15, 1776.

Influences affecting the constitutions.

117. The First State Constitutions. — The conventions called to frame constitutions for the new States had no models to guide them in their work except the colonial charters. It was natural then that they should copy the charters to some extent, and that they should provide for governments like those to which they had been accustomed, giving their trusted assemblies the power which the King had formerly exercised of appointing the governors, and leaving the selection of judges as well to the legislatures. Having completed the constitutions, the conventions declared the constitutions to be in force, and adjourned. Virginia was the first State to be dissatisfied with such a constitution, for a week before the Continental Congress passed the Declaration of Independence (July 4, 1776), her convention adopted a constitution, including a bill of the rights of individuals with which the new government should never interfere, and a declaration of independence, as well as a frame of government. Almost all of the latter constitutional conventions of the Revolutionary period followed her example by adopting bills of rights in addition to articles setting forth the form and powers of the departments of government. In Massachusetts, the home of the town meeting, the convention went even farther, and submitted the completed constitution to the voters of the State for their ratification, thus giving the people a real share in the work of constitution making.

The Virginia constitution.

The Massachusetts constitution.

Changes in the character of the constitutions.

118. The Later History of our State Constitutions. — The state constitutions of the present are quite different from those of the Revolution. The first constitutions were comparatively short and principally devoted to showing how the different branches of the government should be chosen and what powers each branch should have, while those of to-day, as we shall see (§ 136), touch upon a great many other sub-

jects. Practically all of the constitutions, however, have bills of rights, like that of Virginia. But in those days the people had not become accustomed to a great degree of self-government, and they were not very experienced in making constitutions. Consequently, they allowed the conventions to frame the constitutions and put them into operation, without asking the voters whether they liked the new constitution or not. It was only after 1820 that the Massachusetts method of popular ratification was used in many States, but it has become so common that only a little over ten per cent of the state constitutions framed since that date have been adopted by the conventions without ratification by the voters.

Restrictions placed on legislatures.

119. Changes in the State Legislatures. — In 1776, the people were afraid to trust their governors and judges, because of the experience they had had with those officials in colonial times, so they gave the legislatures extraordinary powers. At first no law passed by a legislature could be vetoed by a governor. To the legislatures was also intrusted almost the whole power of appointing public officials. The history of the state legislatures since the Revolution is to a large extent the history of the restrictions placed upon the lawmaking body. The people soon saw the necessity of some check such as a veto; but instead of giving the governors the power to entirely prevent bills from becoming laws as was possible in colonial times, they allowed two thirds or three fourths of the members in each house of the legislature to pass bills over the governor's veto. The legislature's power has been still further decreased by forbidding the passage of laws which apply to a single locality or to one person, ordinarily called local and special laws (§ 156).

Restrictions upon powers of the legislature.

Legislative sessions then and now.

A century or more ago, the members of the legislatures were always elected for short terms, and annual sessions of

considerable duration were compulsory; but so different is our feeling to-day that only a few States permit regular legislative sessions more frequently than once in two years, and a majority limit these sessions to forty, sixty, or ninety days.

Changes in powers and methods of selection.

120. Changes in the Executive Departments. — The governors and their assistants, on the contrary, are being given a constantly greater part in the work of the state government. All of these officials were at first chosen by the legislatures except in the New England States, in which the governors were elected by the people. Before 1830, however, popular election of the governors became customary, and since the middle of the nineteenth century the universal practice has been to elect the secretaries of state, the controllers, and other executive officials at the same time as the governor.

Creation of an elective judiciary.

121. Changes in the Judiciary. — The change from an appointive judiciary, which prevailed everywhere during the eighteenth century, to the elective one of the present, was much slower and less complete than in the case of the executive officials. Many of the older States still have some of their judges appointed by the governors, or the legislatures. But very few States retain the older custom of selecting judges for good behavior, the terms in a majority of the States seldom exceeding ten years for the justices of even the highest courts.

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Topics

THE CONTESTS BETWEEN THE COLONIAL GOVERNORS AND THE ASSEMBLIES: Thwaites, *The Colonies*, §§ 123–126; Greene, *The Colonial Governor*, pp. 145–195.

THE FIRST STATE CONSTITUTIONS: Fiske, *Critical Period of American History*, pp. 65–69; Bancroft, *History of the United States*, V, pp. 111–125; Schouler, *Constitutional Studies*, pp. 29–69; Thorpe, *Constitutional History of the American People*, I, pp. 60–100.

Studies

1. The powers of the colonial governor. Greene, *The Colonial Governor*, pp. 202–205.

2. The people and institutions of the colonies. Hart, *Formation of the Union*, §§ 3–10; Channing, *The United States*, 1765–1865, Chapter I; high school histories of the United States, usually under date 1763.

3. The influence of democracy in the States, middle of the nineteenth century. Ashley, *American Federal State*, §§ 182–190.

Practical Questions

1. How was the governor of Virginia chosen in 1700? in 1780? in 1900?

2. Which colonies were allowed practically complete self-government?

3. Are the constitutions and laws of the United States part of the law of this State, or not? (§ 264 of this book.)

CHAPTER X

THE SPHERE OF STATE ACTIVITY

Powers indirectly denied to the States.

122. The Powers denied to the States. — As we noticed in the first chapter (§ 11), our federal system of government is so constituted that certain duties are intrusted by the people to the national government, while all the other functions of government are left with the States, to be exercised by them through either their state or their local governments. The United States Constitution enumerates the powers granted to the national government, such as the right to levy taxes, declare war and make peace, provide an army and a navy, arrange treaties, regulate foreign and interstate commerce, coin money, and govern national territory; and the same Constitution mentions which of these powers and what others are especially forbidden to the States. No State can engage in war or raise an army unless actually invaded, nor collect duties upon imported goods except for the national treasury, nor make any treaty. The States may not coin money, issue paper money, "make anything but gold or silver a tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility." Furthermore, no State may establish a system of slavery, "make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdic-

U. S. Constitution, Art. I, § 8.

Powers expressly denied to the States.

U. S. Constitution, Art. I, § 10, Amendments, XIII, XIV, XV.

tion the equal protection of the laws." No State is allowed to abridge the right of citizens of the United States to vote on account of race, color, or previous condition of servitude.

Powers left to the States.

Unless, however, a power is granted to the United States government exclusively, or denied to the States in explicit language, it may be exercised by any State as it sees fit.

Different Duties of the States

Freedom in arranging structure and powers of the governments,

U. S. Constitution, Art. IV, § 4.

123. Provisions relating to State and Local Government. — It may be a little difficult to realize at once how very wide is this field of activity left to the States, that is, to the people of the States, for the word "state" is not synonymous with state government. First of all, the States absolutely control the governments that shall carry on the State's work, subject to the limitation of the United States Constitution that the governments shall be republican in character. The people of the States can, therefore, in making their state constitutions, place what restrictions they please upon the powers of the state legislatures, and they can limit or extend the powers of the city and county governments, making them wholly subject to the legislatures or entirely independent of them. In practice, the restrictions placed upon the legislatures, although numerous, do not greatly hamper those bodies, and the local governments, as we have seen, are allowed by law and custom to exercise much the same functions in all parts of the United States.

and qualifications of electors.

The people of the States also decide who may take part in the work of governing by voting, provided that the right of citizens to vote is not denied or abridged on account of race, color, or previous condition of servitude.

124. The Regulation of Individual Rights is left almost

Number of rights protected by the States.

exclusively to the States, for the work of the national government does not bring it into close contact with our daily life except for the postal service. In consequence, it is a matter of considerable interest that every State in the Union provides in its constitution that the state and local governments shall not deny us certain rights. Among these are the right to perfect religious liberty, to speak and write without governmental interference, to have our homes free from search, except when we are accused of crime; and for every accused person to be tried without delay before a jury of his peers and to be exempt from unusual fines or punishment.

The laws defining personal relations.

125. The Making of Ordinary Law. — The States have practically entire charge of making the laws dealing with our personal relations with one another, and the laws under which almost all of our business is done. The legal relations of husband to wife, of a parent to a child, of an employer to an employee, of a principal to an agent, are determined by the States and not by the national government. For example, all our marriage and divorce laws, the laws relating to labor, the laws dealing with contracts which one person makes with another, are state laws. Our right to hold real or personal property, to buy or sell anything, or to inherit a bequest is exercised under state laws.

Corporation laws.

The States create corporations, giving them the right to do business as individuals, so that practically all manufacturing corporations, transportation companies who do business exclusively within one State, insurance companies, loan, trust, and banking corporations, are created in accordance with the provisions of state laws, and are subject to state and not national supervision.

Need of courts.

126. The Administration of Justice. — The enumeration of individual rights in the constitutions, and the making of

the laws just mentioned, necessarily involve some means for protecting those individuals whose rights under the constitutions or laws have been infringed by others. For this purpose a system of courts is created to which the injured party may apply for a redress of his grievance. The greatest care is taken by the States in arranging the procedure of the courts and the methods for trying these civil suits, as they are called, in order that the innocent and the defenceless may not suffer at the hands of the powerful and the unscrupulous.

Civil suits.

But the administration of justice by the States is by no means confined to civil suits, for a great part of the work of the courts is in connection with criminal cases. As comparatively few crimes are committed in violation of national laws, practically all criminals are tried by state courts and punished in state institutions for breaking the laws passed by the state legislatures for the protection of the life and property of the citizens.

Criminal cases.

No case tried in a state court can be appealed to a national court unless it involves national law.[1] As comparatively few cases do, the administration of justice in those matters that concern us most closely is a phase of state activity.

State and national courts.

127. Administrative Functions performed by the States.— These duties we have been considering could not well be neglected by the States, since they were not granted to the national government and since they touch the foundation of our business and social life. Many others are performed by the state or local governments which are now considered essential to our welfare. The magnificent system of public

Important work in caring for

[1] The expression "national law" is used here and in some other cases in a very broad sense, including the United States Constitution, the treaties, and the laws made by Congress.

education, education is a phase of state activity, resting upon a state school law, which is administered by the localities. The state

public health, and local boards of health, enforcing quarantine laws, preventing the spread of diseases, and aiding the local governments in their task of providing more perfect sanitary arrangements,

public improvements, are doing a work that benefits every one of us. Public improvements like state canals or roads, bridges, public buildings, and systems of waterworks, whether constructed by the state or local governments, are parts of the State's work.

the poor and unfortunate. The elaborate arrangements found in every State for the care of the poor, the insane, and the blind show that the States are doing their duty toward the needy and the unfortunate. All of these functions are becoming more important year by year, and are typical of the work which the States are now undertaking along other lines for the public benefit.

Uniformity and Diversity in State Laws

Increase of interstate travel and business. **128. The Increasing Need of Uniformity in State Laws.** — Since the States have the power to make such laws as they please in relation to the subjects we have been considering, it is quite interesting to know whether the laws of the various States are very much alike. If the States have a dozen different kinds of laws regulating the making and enforcement of contracts, persons in different States cannot well do business with one another. Nowadays we feel that these laws not only should be, but must be, more or less similar, for no State is willing to depend upon its own people for all that it needs. We believe that state boundaries ought not to be division lines between radically different systems of law. Interstate trade or interstate travel is no longer a thing of rare occasion, but an everyday affair, and the need of uniformity in all of the great principles of state law is becoming constantly greater.

129. The Control of Corporations. — An illustration of the disadvantages due to a lack of uniform legislation is furnished in connection with corporations. No corporation can do business until it has filed incorporation papers with the secretary of state in some State, and has paid an incorporation fee. It is then allowed to transact business in any part of the Union, being subject to the control of the State in which it was incorporated. If the control of one State is more lenient than that of the others, large companies will take out their incorporation papers and maintain offices in that State, although most of their business may be in one or several others. This makes it possible for a corporation to evade a strict incorporation law, and makes it impossible for any State properly to enforce a reasonably severe corporation law, much to the loss, not only of this State, but of the entire country. **Interstate practice.**

130. Variations in State Laws on Important Subjects are quite numerous, and often objectionable. The laws which define crimes and provide penalties for criminals vary to some extent. In one State an offense may be merely a misdemeanor, punishable by imprisonment for a short time, while in an adjoining one, it may be considered a felony, conviction for which means from ten to twenty years of hard labor. Differences of this nature are not only unjust, but lead to a greater amount of lawlessness than would be the case under uniform laws. **Criminal laws.**

Divorce laws are very dissimilar in some of the States. South Carolina does not permit her courts to grant divorces for any reason whatever, and the laws in a few of the other States are very strict. In most sections, on the contrary, divorces are granted upon slight pretexts. For many years the more conservative States were unable properly to enforce their divorce laws, because their citizens, by temporary resi- **Divorce laws.**

dence where the laws were lax, could easily obtain divorces. This practice was at one time so common that the courts became more lenient everywhere, but it has been discontinued, as the United States Supreme Court has declared such divorces illegal.

Interstate comity. U. S. Constitution, Art. IV, § 1.

131. Means of procuring Uniformity. — The United States Constitution has aided in the development of a uniform system of state law throughout the country. It prescribes that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." Decisions of courts in one State are often cited and followed in another. If a person dies in Colorado, owning property in that State and in New York, his will, if approved by the Colorado courts, will also be accepted by that of New York. Such an action would be improbable without this clause of the Constitution, which has made uniform laws on many subjects almost indispensable.

132. The Degree of Uniformity in State Laws is much more marked than the diversity, because the differences are ordinarily in details, while the general principles of state law are everywhere much the same. As President Woodrow Wilson says: "We feel the conflicts because we suffer under their vexations; while we fail to realize and appreciate the uniformities, because they are normal, and have come to seem matters of course."[1]

"All the States have built up their law upon the ancient and common foundation of the Common Law of England, the new States borrowing their legislation in great part from the old. Nothing could afford clearer evidence of this than the freedom with which, in the courts of nearly every State in the Union, the decisions of the courts of the other States, and even the decisions of the English courts, are cited as suggestive or illustrative, sometimes also as authoritative, precedent. Everywhere, for instance, the laws of property rest upon the

[1] Wilson, *The State*, § 1114.

same bases of legal principle, and everywhere those laws have been similarly freed from the burdens and inequalities of the older system from which they have been derived. Everywhere there is the same facility of transfer, the same virtual abolition of all the feudal characteristics of tenure, the same separation between the property interests of man and wife, the same general rules as to liens and other claims on property, the same principles of tenancy, of disposition by will, of interstate inheritance, and of dower. Everywhere, too, contracts, common carriage, sales, negotiable paper, partnership, rest upon similar principles of practically universal recognition."[1]

General References

Wilson, *The State*, §§ 1087–1095, 1108–1115.
Ashley, *The American Federal State*, §§ 241–246, 438–444.
Bryce, *The American Commonwealth*, abridged ed., pp. 287–296.

Topic

THE QUESTION OF DIVORCE: Wright, *Practical Sociology*, pp. 159–176; G. A. Stewart in *Popular Science Monthly*, XXIII (1883), pp. 224–237; E. J. Phelps in *Forum*, VIII (1889), pp. 349–364.

[1] Wilson, *The State*, § 1114.

CHAPTER XI

THE STATE CONSTITUTIONS

Relation to the law of the State.

133. The Character of a State Constitution. — A state constitution is the fundamental law which the people of the State have arranged for their government and protection. Unless they have overstepped the limit of the sphere of activity left to the State by the people of the whole United States, their constitution can be modified only by themselves. This is but another way of saying that within that sphere of activity which we studied in the last chapter, the people of each State have the right to complete self-government. But if any article of a state constitution is contrary to the Constitution of the United States, it must be revised because the national "Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." For the same reason, the constitution of a State might be amended by the adoption of an amendment to the national constitution which the State did not ratify. For instance, if an amendment were adopted conferring upon Congress the power to make a national suffrage law stating who might vote for all officials to be elected within the United States, the congressional law authorized

Relation to the Constitution of the United States.

U. S. Constitution, Art. VI, cl. 2.

by this amendment would supersede all the articles in the state constitutions on that subject.

Ways of changing a constitution.

On the other hand, a law made by the state legislature which conflicts with the state constitution will be set aside by the courts as unconstitutional and void. The state constitutions can therefore be changed only by the people of the States, acting directly and through special representatives, except upon those rare occasions when an amendment to the United States Constitution affects that of the State.

Constitutions — their Formation and Contents

Legislature and people.

134. Calling a Constitutional Convention. — Several of the States have constitutional conventions at regular intervals to revise the existing constitutions; but most of them give the legislatures the right to decide when a new convention shall be called. The first step is taken when the legislature passes a resolution asking the voters to signify at the next regular election whether they wish a new constitutional convention. Such a resolution is not usually passed by an ordinary vote, as nearly one half of the States demand that two thirds of the members elected to each house of the legislature approve the resolution before the people vote upon the question. If, at the next election, a majority of the voters favor the convention, the legislature arranges for the election of delegates in districts throughout the State and designates a time and a place for the convention to hold its sessions. The meeting of a convention is an important event and the delegates are usually selected with great care.

Seven state constitutions require periodical votes upon whether conventions shall be called or not. The interval in New Hampshire is seven years, in Iowa, ten, in Michigan, sixteen, and in New York, Maryland, Virginia, and Ohio is twenty years.

constitutional laws, which are placed in the constitutions both in order that the people may vote upon them and that they may not be altered by the legislatures.

The constitution as codes.

The main differences between the older constitutions and the newer ones is that those last adopted contain a larger number of these statutes than is the case with the earlier ones. The charge has consequently been made that the newer constitutions are becoming more like codes, which must of course be revised much more frequently than would be necessary for true constitutions.

Individual Rights Guaranteed by the State Constitutions

Original purpose.

138. The State Bills of Rights. — When the American colonies separated from Great Britain, in 1776, they felt the need of protecting individual rights from the arbitrary action of any government. In consequence, the States adopted as parts of the new state constitutions "bills of rights," which aimed to prevent oppression of the citizens by the new state governments. The provisions of these bills of rights have been made more and more specific, so that those of to-day are valuable safeguards of personal liberty. When we realize that under our federal system of government, the state and local governments make and execute almost all of the laws that are concerned with our everyday affairs; we can appreciate the need of guaranteeing to the individual freedom from interference in his home, his religion, and his business, by local and state authorities, as well as the need of giving him every opportunity to secure justice in civil or criminal suits. All of this the state bills of rights are intended to insure to the citizens.

Present value.

139. Freedom of Speech and of the Press. — While the

right peaceably to assemble and petition the governments is one not likely to be interfered with, most of the state constitutions expressly prohibit its denial. A still larger number, in fact all, assure freedom of speech and of the press, although many of them explicitly assert that persons who seek to injure the reputation of others shall be liable to punishment. These also specify that in a suit for libel, the truth may be introduced as evidence, and that malicious intent on the part of the speaker or writer must be proved.

Right of petition.

Libel suits.

140. Religious Liberty. — It is eminently fitting that in this country, where religious freedom was permitted when restrictions existed everywhere else, our state bills of rights should provide for the fullest liberty in religious matters. No State allows its governments to dictate to any one what church he shall attend, or compels him to contribute for the support of any church, the establishment of state churches being everywhere forbidden. No person is disqualified from holding office or exercising legal rights because of his religious views, although a very few of the older States make belief in the Deity a requisite for holding certain state offices. Such practices as polygamy are, however, punished as crimes, even when permitted by a religious sect.

State and Church.

Polygamy.

141. Rights of a Person accused of Crime. — In all of the States the great safeguard for a person accused of crime is the constitutional provision that the trial shall be held as soon as possible in open court before a jury of his peers. Further, no one can be held for trial unless a written charge has been filed against him. This charge may be merely an *information*, which is a document drawn up by the public prosecutor; but if the crime is murder, no person can be held for trial until the evidence has been considered by a grand jury and the person *indicted* by the jury.

Rights during trial.

Rights before trial.

Except for crimes punishable by death, the accused has the opportunity of offering bail, which is forfeited if he fails to appear on the day appointed.

General References

Bryce, *The American Commonwealth*, abridged ed., pp. 297–328.
Oberholtzer, *The Referendum in America*, pp. 99–172.
Cleveland, *Growth of Democracy*, pp. 109–127.
Hitchcock, *American State Constitutions.*
Cooley, *Constitutional Limitations*, pp. 32–101.
Jameson, *Constitutional Conventions.*

Topic

THE EVOLUTION OF THE STATE CONSTITUTION: Bryce, *The American Commonwealth*, abridged ed., pp. 297–305, 317–319; Cleveland, *Growth of Democracy*, pp. 109–113; Oberholtzer, *Referendum in America*, pp. 99–127; Hitchcock, *American State Constitutions.*

Studies

1. Are changes in the state constitutions too frequent? (See Ashley, *American Federal State*, § 414, with marginal reference.)
2. Are the state bills of rights less important than they were in the eighteenth century?
3. State bills of rights. Bryce, *American Commonwealth*, abridged ed., pp. 307–311.

Practical Questions

1. When was our state constitution adopted? What was the ratifying vote? How many constitutions have we had in all? Have any proposed constitutions ever been rejected?
2. How may our constitution be amended? How many amendments have been adopted for the present constitution? To what do they refer? Were any submitted to the voters at the last election? If so, were they adopted or rejected?
3. Make a list of the important statutes in the constitution.
4. Is the bill of rights in our constitution long or short? What provisions of the United States Constitution are copied?
5. Give the provisions regarding religious freedom, freedom of speech, and right in trials. Name any important rights given in the constitution, but omitted in this chapter.

New York State Capitol, Albany, N.Y.

CHAPTER XII

THE STATE LEGISLATIVE DEPARTMENT

Composition of the Legislatures

142. The Two Houses. — The universal form for the state legislatures is that of two houses, the smaller of which is always called the senate, while the larger is usually known as the house of representatives or the assembly. These houses have practically equal powers, as ordinary bills may be introduced in either house, and must be passed by both before becoming laws. The difference between the houses is therefore principally one of size, as both represent the same people, are chosen by the same voters, and have practically the same interests.

Similarities and differences.

The only States that have ever had one-chambered legislatures are Pennsylvania (1776–1790), Georgia (1777–1789), and Vermont (1791–1836).

143. Senatorial and Representative Districts. — For the election of members of the state legislatures, most States are divided into as many senatorial and representative districts as there are members in the upper and lower houses respectively. In theory at least, the population in each of the senatorial districts, or in each of the representative districts, is practically the same as in all of the other senatorial or representative districts. Some States, as Montana, give equal representation to the counties for the upper house, while others, as Vermont and Connecticut, allow the small

Character of the districts.

towns to send almost if not quite as many members to the lower house as the large ones may. Since the real basis of representation in the legislatures of most of the States is population, provision is made for reapportionment of the districts every five or ten years, following the national or special state censuses. It is the law everywhere that districts shall be contiguous, and that legislatures shall not subdivide any county unless the county is entitled to two or more members. This is necessary in order to prevent a legislature from creating a district favorable to itself by taking a part of one county and attaching it to another district.

Reapportionment of districts.

Unfair reapportionment.

144. Gerrymandering. — There is always great danger that a partisan legislature, which has the right to redistrict a state, shall rearrange the districts for its own benefit, in spite of the laws requiring the districts to be equal in population and to be contiguous or even compact. This practice is called "gerrymandering," and, if permitted, may thwart the popular will by electing, through the gerrymandered districts, a legislature which does not represent the majority. A usual method in gerrymandering is to unite as many strong opposition counties as possible in one district, thus allowing the party in power to elect its representatives from surrounding districts by fair pluralities. Good historical examples of gerrymandered districts are the odd-shaped Massachusetts district, in connection with which the name "gerrymander" was first used nearly a century ago, and the famous "shoestring" district in Mississippi of more recent date.

Object.

145. Proportional Representation. — It is believed by many students of political affairs that the evils of gerrymandering, and those of unequal representation as well, can be avoided by some form of proportional representation. By having the districts sufficiently large so that many repre-

sentatives are chosen from each district, each party can elect from this district a number of representatives in proportion to the vote cast for its ticket. If the plan can be made to work, a much more just representation of parties in the legislatures will be the result. The chief obstacle to the adoption of proportional representation seems to be the strong attachment of Americans to the single district system — a system which, in the opinion of a very high authority upon the American government,[1] is a chief cause of the defects of our legislative bodies.

Objections.

Illinois is the only State that has made adequate trial of proportional representation for state offices. There are fifty-one senatorial districts in each of which one senator and three representatives are chosen. Every voter may cast one ballot for a state senator and three for representatives, casting all three for one person or for different ones as he prefers. The districts are, however, too small to afford a fair test of the merits of the system.

The Illinois system.

146. Legislative Sessions. — All of the earliest state constitutions compelled the legislatures to hold at least one session a year, and aimed to prevent long breaks between sessions. Gradually the States recognized the need of less legislation, and biennial sessions became more general, until now only six States hold annual sessions. Four of these, and a few of the other older States, place no time limit on legislative meetings, but most of the States think a sixty or ninety day session long enough, while three of them make forty days the limit. Extra sessions may be called by the governors, either at their own wish or on request of a stated proportion of the members of the legislatures. When no agreement can be reached as to the time of adjournment for

Ordinary sessions.

Special sessions.

[1] Mr. James Bryce, the English statesman; see his *American Commonwealth*, abridged ed., pp. 143–146, 334–336.

either a regular or a special session, the executives may set a day for that also.

Massachusetts, Rhode Island, New York, New Jersey, South Carolina, and Georgia are the States having annual sessions. Regular sessions are held in Alabama once in four years. South Carolina, Wyoming, and Oregon pay their legislators for forty days only.

The Houses and their Members

Rules of the houses.

147. Legislative Regulations. — Each house regulates its own affairs under the state constitution. That all-important document tells how many members shall constitute a quorum — usually a majority of those elected — shows under what circumstances a member may be expelled — ordinarily by a two thirds vote — and arranges that a journal be kept and published. It permits each house to elect its own officers, except the presiding officer of the senate when the state has a lieutenant-governor, and allows each to decide for itself which of two contesting candidates is entitled to a seat with its own members.

Two methods of payment.

148. Compensation of Legislators. — Legislators are not asked to donate their time to the public service, although the pay is never large enough to be a great inducement. No distinction in salary is made between the senators and representatives, all being treated exactly alike. Two methods of payment are used, one set of States granting a yearly salary, the other and larger set fixing a *per diem* rate, although both grant an extra allowance of "mileage," for traveling expenses. As might easily be imagined, most of the States that have sessions of an indefinite length prefer a fixed sum per year, varying from $150 in Maine to $1500 in New York, the latter being the only State in the Union where the pay amounts to $1000 or more. The usual daily compensation is $5, no State paying over $8, and one, Rhode Island, but one dollar a day.

Historical.

149. Privileges and Disabilities of Members. — When we look over the privileges accorded members of our legisla-

tures, we are unconsciously carried back to the time when the English kings tried to interfere with the action of Parliament by arresting its boldest members. When we consider the disabilities of legislators, we are just as forcibly reminded of the effort made by later Parliaments to prevent corruption of their members by the executive branch of their government. Members of the legislatures in all the States are privileged from arrest during legislative sessions, except for treason, felony, and breach of the peace, and are permitted perfect freedom of speech within the halls of the state capitols; but no legislator may be appointed to a lucrative position created during his term of office.

Regulations at present.

150. The State Senates are bodies varying in size from fifteen in Nevada to sixty-three in Minnesota.

Size.

Senators are chosen for a period of from one to four years, the latter being the term in about two thirds of the States. The majority of the senates are "perpetual" bodies, one half of the senators retiring at a time, but otherwise they are very much like the lower houses. There are constitutional qualifications for both senators and representatives, of which those in Pennsylvania may be taken as a fair example. In that State, senators must be at least twenty-five years of age and representatives at least twenty-one. All shall have been citizens and inhabitants of the State four years, and shall have lived within their respective districts during the year preceding their election.

Terms of senators.

Qualifications of senators.

The state senates usually have the right to confirm or reject the appointments made by the governors, and are often allowed to appoint independent of the executive. When a state official is impeached (see § 177) by the lower house, the senate decides whether he is guilty or not, a two thirds vote being necessary to convict.

Special powers.

Massachusetts and Rhode Island have a one-year term for senators, and New Jersey a three-year term.

Numbers and terms of representatives.

151. The Lower Houses of the state legislatures vary much more in size than do the senates, the smallest having but thirty members, while the largest numbers 393. The members are chosen for two years, except in four of the Northeastern States which hold elections every year, and in Alabama, Louisiana, and Mississippi, where the term is four years. In over one third of the States the term is the same as that of senators.

Special powers.

The special powers of the lower houses are relatively less important than those of the national House of Representatives. The right of originating revenue bills, which the colonial assembly cherished as its most valued possession, still exerts an influence, as over one half of the States give the lower houses exclusive charge of introducing revenue bills. Impeachment is also brought by the lower house.

The Process of making Laws

Bills.

152. The General Process. — As a rule, the state constitutions prescribe the steps to be followed in making laws. First of all, a bill, as it is called, is introduced in one of the houses of the legislature by some member. The character of the bill is indicated by its title, which must not include more than one subject. After the clerk has read the bill either in full or by the title, it is usually sent to the committee having charge of all subjects similar to those of which the bill treats — in technical language, the bill is committed. The committee may not see fit to bring into the house a report upon it, and it is said to have been "killed in committee." If fortunate enough to escape this fate, it is reported, read a second and third time, and pos-

Action by committees.

sibly debated or amended. Finally it may be brought to a vote, and if favored by the majority required by the state constitution — usually one half of those elected to the house — it is signed by the presiding officer and sent to the other house. Again it must go through the three readings on three separate days, and if approved, is sent to the governor. The governor has from ten to thirty days to decide whether he will sign the bill. If it is objectionable to him, he returns it to the house in which it originated, with his reasons for "vetoing" it. If however in spite of his veto, a large majority in each house still wish the bill to become a law, it is "passed over the veto" and becomes a law without the governor's signature.

In the houses.

The governor.

153. Special Limitations upon the General Process of Legislation. — Although all of the States demand that every bill shall be read in each house upon three separate days, all provide for emergencies by allowing large majorities to set aside the rule. Under extraordinary circumstances a governor may therefore be able to sign a bill the same day it was originally introduced. The committee system is in universal use, but only the Western constitutions make it obligatory to commit every bill. The committee system of the States can be best understood by studying that of Congress (§§ 333–337).

Provision for emergencies.

In only three States, Rhode Island, North Carolina, and Ohio, is the governor denied the right to veto laws, although in some of the others, the majority required to pass a bill over his veto is no larger than to pass it the first time.

The veto.

In order to avoid hasty legislation, some of the States have added other prohibitions to those mentioned above. One of the most important of these prevents the legislature from introducing new bills within ten or fifteen days of the close of any session. As the last days of any session are always the busiest ones, and legislators do not have time to carefully examine measures introduced at the eleventh hour, the danger that ill-considered bills may be "railroaded" through the legislature is much reduced.

Time limits.

General References

Bryce, *The American Commonwealth*, abridged ed., pp. 329–341.

Shaw, "American State Legislatures," in *Contemporary Review*, LVI, pp. 555–573.

Cooley, *Constitutional Limitations*, pp. 155–191.

Topic

THE DEFECTS OF OUR STATE LEGISLATURES: Bryce, *American Commonwealth*, abridged ed., pp. 371–386; Roosevelt, "Phases of State Legislation," in *Century*, XXIX (1885), pp. 820–831; F. C. Lowell, "Legislative Shortcomings," in *Atlantic Monthly*, LXXIX (1897), pp. 366–377.

Studies

1. Give some account of the history and present methods of "gerrymandering." Fiske, *Civil Government*, pp. 216–218; Lalor's *Cyclopædia*, II, pp. 367–368.

2. What plans have been used or proposed for proportional representation? Commons, *Proportional Representation*, pp. 86–131.

Practical Questions

1. How many senators are there in the legislature of this State? how many representatives? For what terms are they elected? What salary does each member receive? Is the senate a "perpetual" body? If so, what proportion of the members retires at a time? (State Constitution.)

2. When are our State elections held? When does the legislature meet? Are there any limitations upon the length of the sessions?

3. How many constitute a quorum for each house? What vote is necessary to pass a bill, the first time? over the governor's veto?

4. Name some of the constitutional restrictions upon procedure in our legislature.

5. Give the boundaries of this senatorial district; this assemby district. How do they compare in area and population with other districts in this vicinity?

6. Who are our present representatives in the legislature? How long have they served in this capacity? Which political party has a majority in the legislature?

CHAPTER XIII

THE POWERS OF THE LEGISLATURES

154. The Importance of the Legislature. — The legislatures overshadow the rest of our system of state government, since they not only make laws upon all subjects that are not expressly and exclusively granted to the national Congress, or denied by the United States or state constitutions to the legislature, but may also interfere in many ways with the work of the other departments. All of the general laws under which our local governments and schools are organized, those referring to the state and local courts and procedure in these courts, those dealing with the making and enforcement of contracts, the transfer of property, marriage and divorce, with the prevention of the spread of diseases, with the incorporation of business houses—all of these form only a part of the vast number under the charge of the legislatures, the whole covering a set of subjects of the first importance not only because there are so many, but because all are of such interest to us in our home and business life.

Legislative powers.

We can probably get the best idea of what power the legislatures possess by mentioning the restrictions placed upon them, but we must not forget that the powers still exercised by the legislatures greatly outnumber the powers denied to them.

Restrictions on powers.

General Limitations upon the Legislatures

Bills of rights.

155. Subjects formerly left to the Legislature, but now denied to It. — American experience with over-legislation and unsatisfactory laws (§ 119), has led to a considerable restriction of the powers of legislature. The bills of rights have always forbidden the passage of laws that would interfere with the individual rights enumerated in them, but to these prohibitions have been added many new ones which do not permit the legislatures to invest the State's money in any enterprise, nor make grants to sectarian institutions, nor incur debt beyond a certain limited amount. Still more has the power of the legislature been curtailed and its authority impaired by allowing the constitutional conventions to pass upon such subjects as the suffrage, education, taxation, railroads, and banks, laws which are placed in the constitutions and thus beyond the power of future legislatures to alter or repeal. This usurpation of legislative functions by the constitutional conventions has been due to popular distrust of the legislatures, but it has also increased the distrust, as less care has been taken to secure competent lawmakers.

Statutes in the constitutions.

Former abuses.

156. Local and Special Legislation. — A great many of the laws passed at every session of our legislatures deal with matters of interest to just one person or locality. These local and special laws were formerly so common that they formed the majority of all laws enacted, but abuses became very numerous and it was found advisable to forbid special legislation. For instance, when companies were incorporated by special act, privileges of great value were occasionally given away, and the people, in self-protection, were obliged to demand a general incorporation law.

Present prohibitions.

The list of titles for which local and special laws may not now be made is quite a long one in most of the States.

The constitutions require that all laws relating to these subjects be of a general character, and that means be provided by which individuals or communities may take advantage of the general law. Whereas formerly the legislature might grant a divorce to a particular person, or change the location of some county seat, or give a justice of the peace in one part of the State jurisdiction over cases denied to a justice in another part; now the legislature provides by general laws for the granting of divorce by the courts, for the changing of county seats in any part of the State, and for uniformity in the jurisdiction of all justices of the same grade.

Evasion of prohibitions.

The legislatures frequently seek to evade these provisions of the constitutions by passing laws that are really special, but which they call general. In many States where laws dealing with separate cities are not permitted, the legislature has first divided the cities into classes with one or at most two cities in a class, and then proceeded to make laws for each class. This evasion of the constitution has been permitted in some States by the courts, but fortunately not in many.

Restrictions in sessions and procedure.

157. Other Restrictions upon the Legislature. — There are many other restrictions upon the legislature which indirectly restrict its power. The tendency we have mentioned to make sessions short and infrequent gives the legislature much less chance to exert its influence in both legislation and administration than was once the case. Still further are its possibilities for good or evil limited by the many regulations upon the procedure within the legislature. Law-making has been made still more difficult by increasing the majorities required to pass a bill, and by permitting a veto of the governor — except in three States — which can be overridden only by a very large majority.

Direct Legislation

Meaning of direct legislation.

158. The Referendum and the Initiative. — The power of the legislatures has been greatly reduced by different forms of direct legislation. By direct legislation is meant any lawmaking in which the voters participate directly. For instance, when the people vote upon a new state constitution which contains many laws, or upon a constitutional amendment, we have examples of direct legislation. If the voters of a town decide in favor of prohibition, the legislation is direct. This form of direct legislation is known as the "referendum."

Referendum.

Initiative.

There is another form which gives the people not only the last word in lawmaking, but the first as well. This is called the "initiative," and permits a certain number of the voters to propose laws which the legislature must consider. If the legislature does not pass the proposed measure, the people may vote upon it at the next election.

Use of direct legislation.

The referendum has been in use in connection with constitutional amendments and local laws in all of our States for many years. The initiative, however, has been less widely adopted. Many States allow it in local matters, and in certain Western cities, especially San Francisco and Los Angeles, it may be applied to any subject upon application of fifteen and seven per cent respectively of the voters. Chicago permits its use in connection with public utilities. South Dakota and Oregon allow five per cent of the voters to propose laws for the State.

Advantages.

159. The Value of Direct Legislation. — The advantages of giving the people the final decision on such important questions as those treated in constitutional amendments cannot well be questioned. It seems equally important that bills or resolutions involving the expenditure of large sums of public money should likewise be submitted to the voters, for the action of the state legislature or the city council upon these financial bills might be controlled by a

few members who are willing to sell their votes for a consideration. By the initiative, a legislative body may be forced to respect the public demand for some law, which otherwise it would have refused to consider. Acting thus as a check upon the legislatures, and as a means of educating public sentiment, direct legislation gives us better government than we should have had without it. There is no doubt that year by year it is being used more extensively. But therein lies a danger, that we shall use it for the ordinary details of government (a task for which the voters *en masse* are not fitted) instead of considering it a check upon our councils and legislatures.

Disadvantages.

Legislative Control of State Finance

160. The State Systems of Finance. — The legislatures are given general charge of raising and expending state moneys. Unless the constitution specifies with considerable exactness the sources from which all taxes must be derived, the legislatures are allowed a great deal of freedom in arranging the tax system to be used by the state and local governments. In any case, the amount of money to be raised by taxation for state expenses, and the ways in which that shall be expended, are prescribed by the legislatures, and not by the constitutions. There is usually a constitutional limit, however, to the debt which the legislature may incur, just as for the cities and counties (§ 110).

Legislative control of raising and expending public money.

161. The Expenditure of State Money. — The amount of revenue which the state legislatures are required to obtain, depends upon the current expenses of the State. As the work of the state governments does not involve costly improvements, nor the maintenance of great military or naval establishments, comparatively little money is needed. In

Items of expense.

most of the States, the chief expenditures are for the payment of public officials, for the care of the insane and other unfortunates, and for the public schools — part of the cost of supporting local schools being frequently borne by the state government (§ 64).

Use as a state tax.

162. The General Property Tax is still the chief source of revenue for many of the state governments, although it is now used less than formerly as a state tax. The difficulties encountered by the state boards of equalization, in their attempt to make the assessments uniform in all parts of the State (§ 103), are so great as to make impossible a satisfactory use of the general property tax by the central governments of the States.

General and special corporation taxes.

163. Corporation Taxes. — The States which are abandoning the tax upon general property for state purposes, are usually striving to reach the "intangible" forms of wealth by means of corporation taxes. Some States try to tax banks and insurance companies by making them pay a certain per cent of their net income, as shown in the dividends declared by them. Manufacturing corporations are often obliged to contribute a part of their net income, but more frequently the tax is assessed upon their capital stock. Railways both within and outside of cities may be assessed according to the value of their franchises, which is usually represented by the market value of their stock. There is no doubt that this attempt to reach corporate wealth through the corporation is much more satisfactory and successful than to assess the same upon the individuals who may hold stock or bonds issued by the company.

164. Inheritance Taxes. — Another favorite device of the newer systems of state taxation is the tax upon inheritances. This is based upon the principle that the State has a real

if slight claim upon the property of any one who has amassed wealth under the protection of its laws. Few if any of the States require a tax to be paid upon small bequests to a wife, a husband, or a child. But if the bequest is large, or the person not closely related to the deceased, a large percentage of the property left must be paid into the state treasury.

Exemptions.

General References

Bryce, *The American Commonwealth*, abridged ed., pp. 324–328, 339–340, 360–365, 371–373.

Cleveland, *Growth of Democracy*, pp. 177–241, 320–351.

Cooley, *Constitutional Limitations*, pp. 103–154.

Oberholtzer, *The Referendum in America.*

Topic

LOCAL AND SPECIAL LEGISLATION: Cleveland, *Growth of Democracy*, pp. 348–351; Goodnow, *Municipal Problems*, pp. 37–47; Thorpe, *Constitutional History of the American People*, II, pp. 417, 418, 451.

Studies

1. The disadvantages of direct legislation. A. L. Lowell, in *Atlantic Monthly*, LXXIII (1894), pp. 520–526.
2. The extensive use of the referendum for local finance. Oberholtzer, *The Referendum in America*, pp. 241–285.
3. Corporation taxes. Adams, *Science of Finance*, pp. 449–466.

Practical Questions

1. Upon what important topics is our legislature forbidden to make local or special laws? What restrictions are there upon the financial powers of the legislature?
2. Is the referendum in use in this county for any local laws or business?
3. For what purposes does the state government expend the most money? What part of its revenue is derived from corporation taxes? What is the amount of the state debt?

CHAPTER XIV

THE EXECUTIVE OFFICIALS OF THE STATE

Central and local executive officials.

165. The Execution of State Law is intrusted either to certain persons connected with the state government or to the officials of the cities, towns, and counties of the State. So many of the laws are carried out by local officers that comparatively few duties are left to the governor, the secretary of state, and other state officials, who are mainly occupied with routine work.

The Governor

Relation to other executive officials.

166. The Position of the Governor.—The governor is by far the most prominent and powerful executive official of the State. Around his election the chief interest in state politics centers. More than any other one person, he determines what the policy of the state government shall be, and he usually receives the praise and bears the blame for success or mismanagement in the different executive departments. Yet he is often unable to control the actions of more than a small proportion of the state administrative officers, for very few of these officers are appointed by him or are responsible to him. Many of them, as the secretary of state and the auditor, are elected by the people. Others are selected by the legislature or by the heads of departments, and the larger number are local officials, chosen by the voters of the counties, cities, or towns, who are in no way bound to execute a law in the way the gov-

ernor wishes. There is at the present time, however, a very strong movement to concentrate more power in the hands of the governor, giving him greater control over his colleagues, and making him responsible for their acts.

167. The Election and Term of the Governor. — In most parts of the Union, state elections for the governor, legislators, and other officials are held on the Tuesday after the first Monday of November. There is apt to be a great deal of electioneering before the meeting of a state convention, as the candidates for the nomination for governor are usually numerous and active, and each desires to have delegates favorable to himself chosen in different counties. It may therefore be known before the convention convenes who the candidate will be, and the voting in that body is more often than not purely formal. In a close State, the campaign following the nominations will occasionally awaken all of the interest of a presidential year, and in fact the two campaigns often coincide.

Time of holding elections.

Nominating convention.

The campaign.

In twenty of the forty-five States, the governor is chosen for a term of four years, in two States he holds office but a single year, in New Jersey and Pennsylvania the term is three years, and in all of the rest two years. New Jersey and six of the Southeastern States do not permit their governors to hold office two successive terms.

Term of office.

168. Qualifications and Salaries of the Governors. — The States have never felt it wise to allow the voters to elect as governors whomever they please, but have given certain minimum qualifications for the office. As a rule, the governor must be at least thirty years of age, and have been a resident of the State for not less than five years, and a citizen of the United States for an equal period. One State (Maine) allows only native-born citizens to occupy the

Constitutional requirements.

[1] The States which hold their state elections in other months are Arkansas, Georgia, Louisiana, Maine, Oregon, and Vermont.

gubernatorial chair, while another (Ohio) has no constitutional qualifications.

Compensation.

As with the legislators, the governors are expected to receive a part of their compensation in the honor accompanying the office, for the average salary is less than five thousand dollars, and in no case over ten thousand dollars.

Requirements and salaries in detail.

Minnesota demands that her governor be not less than twenty-five, and requires a residence of but one year in the State, her requirements being the most modest of any of the States. Louisiana and Arkansas, on the other hand, require ten years' residence in the State, and New Jersey and Mississippi allow only those who have been citizens of the United States for twenty years to hold the office. New York, New Jersey, and Pennsylvania give their governors ten thousand dollars a year. Oregon and Vermont pay the smallest salaries, fifteen hundred dollars per annum.

Appointment.

169. The General Powers of the Governor. — Although the executive power of the State is divided among so many officials, the governor retains by far the largest share. The offices to which he may make appointments (usually with the consent of the state senate) are both numerous and valuable, and his power of removal, while not great, is constantly increasing. If a vacancy occurs, he may select some one for the office until the legislature or the people can fill the position. In all but a very few of the States, the governor is allowed to grant reprieves and pardons except for such crimes as treason. Some chief executives, to whom public duty has meant less than party success, have abused this trust, because of the temptation to make political capital by pardoning freely. Where there is a state police, it can readily be seen that the governor is able to control the execution of state laws in the localities; but none of our States has as yet created a complete state police system, and in only a very few has this been attempted even in a modified form.

Pardon.

State police.

In Maine, Vermont, and Massachusetts, the governor shares his powers with an executive council, although the two together usually have some additional duties given in other States to separate boards and heads of departments. **Executive councils.**

170. The Military Powers of the Governor. — Being the commander-in-chief of the military forces — the militia — in all of the States, the governor may in time of disorder add greatly to his usual power. The Constitution of the United States permits him to organize this force into an army in case his State is actually invaded, and, if a widespread insurrection exists, he may use the militia in putting down the disorder. More frequently, the militia is likely to be called out to prevent destruction of life and property by the lawless element of society during strikes. If the sheriff of a county finds that he and his deputies cannot cope with the tumult, he calls upon the governor, and that official without delay orders a suitable number of companies to the scene of disorder. **Use of the militia.** **U. S. Constitution, Art. I, § 10, cl. 3.**

171. The Governor's Legislative Powers. — The most important powers of the governor are those relating to the legislature and to legislation. At the beginning of each session of the legislature, he sends to it a message showing the condition of the different executive departments and suggesting needed legislation. Only in rare instances, however, does this message exert a marked influence upon the action of the legislature. When the two houses fail to agree upon a time for adjournment, he may adjourn them until some reasonable future date. He usually possesses the great power of calling all special sessions of the legislature, although in some States it is obligatory for him to do this when a certain number of legislators desire it. **Message.** **Adjournment of legislature.** **Special sessions.**

His right to veto bills is undoubtedly that of most value to the governor. As we noticed (§ 152), when a bill has **The veto.**

been passed in both houses of the legislature, it is sent to the governor, who has usually ten days in which to affix his signature or return it with his veto. Only three of the States, Rhode Island, North Carolina, and Ohio, do not allow the governor to veto bills, and all except four others require a much larger majority to pass the bill the second time than the first. As it is next to impossible for both houses to obtain these majorities when the governor has publicly expressed his disapproval of the bill, unless the feeling between the governor and legislature is most unpleasant, the wishes of the governor are likely to be considered upon any bill of importance. He is able to make his influence felt still further, as he is allowed to veto particular items in appropriation bills in nearly one half of the States.

The Governor's Colleagues

Ordinary duties.

172. The Lieutenant-Governor. — In about three fourths of the States there is a lieutenant-governor, who takes the governor's place when the latter is called away from the State, or when the governor's office becomes vacant by his death or resignation. His ordinary duties consist merely in presiding over the deliberations of the state senate, during its short sessions.

Clerical duties.

173. The Secretary of State is little more than the chief clerk of the state government. He has charge of the state seal, keeps a record of all official acts of the legislative and executive departments, looks after the election returns for all state and national elections, and aids the legislators and governor when the records are to be consulted.

State finances.

174. The Financial Officials. — The finances of the States are relatively less important than those of the Nation and the cities. Nevertheless, several of the States find it

necessary to raise from five to fifteen million dollars a year in order to perform their work properly. The supervision of the financial system is left to the *controller*, by whom every order drawn upon the *treasurer* must be approved, before it can be paid by the latter from the state funds. If the state government expends a large amount of money through the counties, for schools and for public institutions, the controller frequently has the right to audit the accounts of the local officials who handle state money.

Supervision of finance.

175. Other State Executive Officials. — Among the other state executives who are usually chosen by the people, though often by the legislature or the governor, are the superintendents of public works and of public instruction, the surveyor-general and the attorney-general. The first has charge of the erection of all public buildings and such enterprises as canals and irrigation dams. The last, the *attorney-general*, is the legal adviser of the governor and of the legislators, and the public prosecutor in all criminal or civil suits in which the State has an interest.

Names and duties.

176. The Qualifications, Terms, and Salaries of the Governor's Colleagues are determined by the state constitution. The qualifications for the lieutenant-governor are almost invariably the same as those of the governor, as he may be called upon to take the governor's place. For the other officials, the requirements are much less rigid. Men who have fought in duels, however, and those convicted of giving or receiving bribes are debarred from all state offices in many of the States. The terms of office are likely to be the same as that of the governor, but may be much longer, especially when the official is not chosen by popular vote. On the average, a salary of from twenty-five hundred to three thousand dollars is paid each of these "colleagues."

Qualifications and disqualifications.

Terms.

Salaries.

Who may be impeached.

177. Impeachment of Civil Officers of the State. — All important officials connected with the administrative or judicial service of the States may be removed by impeachment through the lower house of the legislature, and conviction in the state senate; most minor officials being removable by the person or the body that appointed them. To impeach a person in the house requires usually only a majority vote; but conviction cannot follow unless two thirds of the senators elected believe the official guilty of the charges brought against him.

Trial.

General References

Bryce, *The American Commonwealth*, abridged ed., pp. 342–346.
Wilson, *The State*, §§ 1183–1208.
Goodnow, *Comparative Administrative Law*, I, pp. 74–82.

Study

1. The election of a governor. S. G. Blythe in *Cosmopolitan*, XXVI (1899), pp. 288–294.

Practical Questions

1. For what term is our governor elected? What are the minimum qualifications prescribed for the office? What salary is paid the governor?

2. Does the governor have the right to call or adjourn the legislature? Has he the right to veto bills? What does the word "veto" mean? If he has the right to veto, what majority may pass bills over the veto? Has he the "pocket veto" (§ 332)? May he grant pardons?

3. Is there a lieutenant-governor in this State? What other elected state officials have we?

4. When was the last gubernatorial election? Who were the principal candidates? Who was elected? What was his plurality?

CHAPTER XV

THE WORK OF THE STATE ADMINISTRATIVE DEPARTMENTS

178. The State Administrative Departments. — Our state governments have numerous duties to perform in overseeing the administration of state law. At the head of the school systems of the States are state superintendents and state boards of education, to supervise the working of the school law, and to assist the local boards. The regulation of the railways within any State is intrusted to a railway commission. State boards of health and of charity, state labor bureaus, and many others, constitute separate departments which aid in administering state laws.

Superintendents, commissions, and boards.

As a rule, the boards in charge of these administrative departments are appointed by the governor of the State for terms of several years. Many of the boards are bipartisan, that is, composed of an equal number of members from each of the two great political parties. In a few States, some of the boards are elected from districts into which the States are divided.

Composition and selection of boards.

Education

179. The State Departments of Education are in charge of superintendents aided in many of the States by state school boards. The school boards are usually appointed by the governors, the superintendents being elected more frequently than appointed. The chief work of the state boards consists

State boards of education.

in arranging and revising the state school law for submission to the legislature, and in adopting other means for improving the schools of the State. In a few States provision is made for state text-books, published under the direction of the state board by the public printer, or selected by the board from the regular text-books. In nine States, text-books are furnished at public expense.

Superintendents of public instruction.

The superintendents usually visit the different counties, examine schools, and gather information for the state boards. In several States, the boards or the superintendents may suspend teachers for cause, or revoke certificates issued by the state or county boards.

Provisions of the school law.

180. The State School Law determines whether the district, the township, or the county shall be the unit for school administration, and what officers it shall select, with the powers of each. It also prescribes a minimum list of the subjects which must be taught in every school, the minimum number of months in the school year, and the qualifications of teachers of the different grades.

Normal schools.

181. State Schools. — The public school systems of most of the States include, in addition to the local schools (§§ 62, 63), normal schools, agricultural colleges, and state universities. The normal schools are institutions for the training of teachers. The majority of these schools are well equipped, and are doing much to raise the standard of efficiency among the teachers of the country. Many of those that rank highest now require a high school education for entrance.

Agricultural schools.

Agricultural colleges have been established in most of the States. By a law passed by Congress in 1862, 30,000 acres of public land were given to each of the States for every congressman to which the State was entitled, the proceeds arising from the sale of these lands being devoted to agricultural education.

Our state universities are among the best in the land. The number of courses offered is exceedingly varied, and instruction is often free for those students who live within the State. Many of these universities have rendered especially valuable service to the cause of education by aiding the grammar and high schools, and by introducing better and more uniform methods in local education. **State universities.**

Charities and Correction

182. State Boards. — In several States the general oversight of the administration of the poor laws and the penal laws is intrusted to a single state board of charities and correction. Much more frequently the States have separate boards of charity, prison boards, commissions for the insane and others. Each of these is assigned but a single set of duties, and makes no effort to work in harmony with the other boards which have charitable or corrective work. **Centralized and decentralized systems.**

183. State Charitable Institutions. — Almost every State now maintains at least one state insane hospital, a state school for the blind, another for the deaf and dumb, and a third for mental incompetents. By caring for their unfortunates in large state institutions rather than in poorly equipped local ones, the States are enabled to use advanced methods and appliances which few local institutions could afford. The care of these classes constitutes one of the chief items of expense in state finance. **Number and character.**

184. State Prisons are reserved for the worst classes of criminals sentenced by the courts, the persons convicted of minor offenses being confined in local jails or penitentiaries. The methods used in the prisons vary greatly, but the discipline is of necessity fairly rigid. Employment is ordinarily provided, chiefly for the purpose of keeping the **Methods used.**

prisoners busy, but partially to help pay the expenses of the prisons. A premium is placed upon good behavior, by reducing the length of the sentences from ten to thirty per cent for satisfactory conduct. Quite frequently "indeterminate sentences" are used, the judge fixing a maximum and a minimum limit for the sentence, and the prison authorities deciding when it is wisest to release the prisoner.

Aim.

185. State Reformatories for juvenile offenders are found in almost every part of our country. By means of strict discipline, by training the boys and the girls to use their minds and their hands to advantage, and by teaching them self-control and the rights of others, an earnest and fairly successful attempt is made to change them into useful citizens.

Transportation

Need of state control.

186. The Control of Commerce exclusively within one State, on railways or highways, is a task to be performed solely by that State. According to the Constitution of the United States, Congress may regulate commerce between the States, but it cannot in any way interfere with a State's supervision of state commerce. On account of the multiplication of railways after the Civil War, there arose the need of state railway commissions to settle disputes between shippers and the railways. As railways are quasi-public corporations and have received not only privileges but help in the form of land grants and concessions, it is just that the state governments should demand in return that the railways charge reasonable rates for all distances, and that they do not charge one shipper more than another for similar services.

Commissions with power.

187. State Railway Commissions, which seek to protect the shippers and the public, are to be found in over two

thirds of the States. Not all use the same methods for the control of the railways, and it is customary to distinguish between two classes of commissions. Those of the first class aim to control the railways by fixing the maximum rates which may be charged for carrying freight or passengers different distances. In addition they usually have power to prevent the combinations of railways, which wish to unite for the purpose of preventing competition. Railway commissions of the second class do not have power to fix rates, but devote their energies to investigating the cost and the profits of transportation. When these statistics are published, if the charges are exorbitant and the profits unusual, public sentiment is relied upon to reduce both to a reasonable amount. Some regulation is certainly essential to prevent the unnecessary and unwise multiplication of railways, to avoid the worst forms of mismanagement, and to keep the great transportation companies from sacrificing the public to their own ends. Yet neither of these classes of commissions seems to have satisfactorily solved the question of properly controlling state commerce.

Advisory commissions.

The problem.

Labor and Industry

188. The Control of Corporations is not intrusted to any one administrative department, but it may be said to constitute, in many States, the great administrative problem of the state governments. The national Constitution does not give the national government the right to control industrial corporations, unless they are also engaged in interstate commerce (§ 287). The whole task of controlling ordinary corporations is therefore left to the States. The difficulties that arise from differences in state law we have already considered (§ 129). We noticed then that no corpo-

State corporation laws.

ration can do business until it has taken out incorporation papers, and that it is subject to control by the State in which it was incorporated. Most of the States now compel every corporation to make an annual report showing the amount of its capital stock, the volume of the business done, the debt of the company, and many other details. Opportunity is ordinarily given for any stockholder to examine the corporation's books at stated periods. Stockholders and sometimes the directors of a corporation are made liable for its debts.

Special commissioners.

There are in many States bank commissioners and insurance commissioners, whose special duties are to ascertain whether the banking and insurance companies have complied with the requirements of the corporation laws.

Proposed methods of control.

189. The Control of Trusts. — The real problem of controlling corporations, aside from railway companies, lies in the regulation of the great industrial companies called "trusts." The different States have attempted to solve this problem in one of three ways. (1) Many States by declaring trusts illegal have sought to destroy them. (2) Other States have tried to keep the trusts within bounds by compelling them to publish a complete account of their expenses and earnings. (3) Some of the States have done nothing, either from fear that no law against the trusts could be enforced, or because they believed a trust to be a distinct public benefit, since it abolishes the wastes of competition. Judging from our experience in this matter, the attempt to control trusts by very radical legislation is likely to do more harm than good, as harsh laws will injure ordinary corporations, and cannot easily be enforced against the more powerful ones. The best methods of control will undoubtedly be found only after years of patient study and experiment.

190. The State Labor Laws. — The supervision of the

laws of the States made for the benefit and protection of the laboring classes is left with labor bureaus and special officers such as factory inspectors. Among the laws found in most States are those regulating the hours of labor, and others compelling employers to provide for the health and safety of their employees.

Labor bureaus.

Many of the States limit the number of hours required for a day's labor on public work to eight or ten, and assert that the same number shall be a legal day's work for private parties, but by contract any employee may agree to work any number of hours he chooses. In the case of minors and of women, however, the laws are more strict, most States prescribing a minimum age limit — usually from ten to fourteen — at which children shall be employed in factories, and fixing the maximum hour limit per week for which women and children may be employed.

Hours of labor.

Very few of the commonwealths where manufacturing is prominent have failed to demand that every company shall do certain things in order to protect the health and safety of those in his employ. Overcrowding is prohibited, fire escapes are required, and boiler inspection is made obligatory. In those cities where sweat shops are common, statutes seek to prohibit them entirely or reduce their disadvantages as far as possible.

Factory regulations.

191. Miscellaneous Administrative Work. — Among the other administrative duties performed by the state boards or commissions are those relating to the public health, the care of fisheries and forest reserves, agriculture, immigration, and many others. The gathering and publication of important information by the officials of these departments is of the highest value, not alone to the people of the respective States, but to officials doing similar work in other States. When we consider that the powers of the different

Work and influence of various boards.

departments treated in this chapter are being continually extended, we can perhaps appreciate how important the administrative work of the state governments is becoming.

A good idea of the number of administrative departments connected with a progressive state government may be gained by consulting the list of "Administrative Officers, Boards, and Commissions," in Morey's *The Government of New York*, pp. 265–272.

General References

Whitten, *Trend of Legislation in the United States.*
Ashley, *The American Federal State*, §§ 445–464, 611–621.
Morey, *The Government of New York*, pp. 156–210.
Ford, *American Citizen's Manual*, Part II, pp. 62–130.
Hendrick, *Railway Control by Commissions.*
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Different Prison Methods: Ford, *American Citizen's Manual*, Part II, pp. 112–124; Wines, *State of Prisons*, pp. 106–113; Wines, *Punishment and Reformation*, pp. 220–228; C. D. Wright in *North American Review*, 164 (1897), pp. 273–282, and in *Practical Sociology*, pp. 378–389.

The Methods of the State Railway Commissions: Hadley, *Railroad Transportation*, pp. 134–145; Dixon, *State Railroad Control*, pp. 201–211; Hendrick, *Railway Control by Commissioners*, pp. 92–119.

Anti-trust Legislation: A. T. Hadley, in *Scribner's Magazine*, XXVI (1899), pp. 604–610; A. F. Walker, in *Forum*, XXVI (1899), pp. 257–267; J. D. Miller in *Arena*, XXIII (1900), pp. 617–626; J. W. Jenks in *Review of Reviews*, XXI (1900), pp. 445–449; and in *Trust Problems*, Chapter XI; H. C. Adams in *North American Review*, 175 (1902), 895–904.

Studies

1. Our state universities. A. S. Draper in *Outlook*, LXVIII (1901), pp. 768–774.

2. Prison methods a century ago. McMaster, *History of People of the United States*, I, pp. 98–102.

3. Laws regarding the hours of labor. Stimson, *Handbook of Labor Law*, pp. 43–65.

4. The regulation of "sweat shops." J. Kirkland, in *Scribner's*, XII (1894), pp. 22–24.

5. A programme for labor reform. S. Low, R. T. Ely, *et al.*, in *Century*, XXXIX (1890), 938–951.

6. Summarize the work done by the state and local governments in regard to education, the public health, the punishment of offenders, and the control of quasi-public corporations. (Consult Chapters V and VII). Place the summaries in notebook.

Practical Questions

1. What officials, boards, or commissions mentioned in the preceding chapter are elected by popular vote in this State?

2. Give the powers of the state railway commission. If there is an anti-trust law in this State, ascertain how it aims to control the trusts.

CHAPTER XVI

THE STATE JUDICIARY

State and national courts.

192. The Task of the State Courts. — As we saw in Chapter X, our state and local governments have a much larger number of duties to perform than the national government, and these duties bring them into close touch with the citizens in their everyday life. Because of this condition of affairs, almost all of the civil and criminal suits brought for trial in the United States, are tried in state courts, rather than in those of the Nation. Not only are these suits begun in state tribunals, but if they do not involve points of national law, the decision of the highest state courts to which the case may be carried is final, for the case may not be appealed to any other court whatsoever.

The System of Courts

Composition and jurisdiction.

193. The Highest State Courts. — At the apex of every state judicial system is a single court, to which all important cases are appealed for final decision. This court has, as a rule, no original jurisdiction, that is, it considers only those cases tried first in a lower court. The number of judges in these courts is usually three, five, or seven, and they are ordinarily chosen for a long term of years by the voters of the entire State. Occasionally they are elected by the voters of districts equal in number to the number of the judges, but in six States they are appointed

by the governors, and in five by the legislatures. Constitutional qualifications for these positions are rare, although many of the States demand that all of the higher judges be men of "exceptional intellectual fitness."

Name.

Some of the States call the highest court the Court of Appeals, and have in addition another court for the whole State which is known as the Supreme Court; but most of them have only one court for the entire State, the name "supreme" being usually applied to this.

Intermediate courts.

194. Inferior State Courts. — For the set of courts below the supreme court, each State is divided into a suitable number of circuits or districts over each of which presides a court, called a *circuit* or *district court*, as the case may be. The judges are ordinarily elected by the voters of this circuit or district, and hold office on the average about six years. These courts have original jurisdiction in important cases and try on appeal cases coming from the ones next lower, the *county courts*.

Lowest state courts.

The base of the judicial pyramid is formed by the country *justices of the peace*, or by the *city* criminal and civil *courts*, whose jurisdiction is of necessity wholly original, and confined to minor cases or those involving local laws. Except in a few of the Eastern States, these judges are always elected by the voters of the section within which the court has jurisdiction, and with a few notable exceptions, elections are held at least every four years.

Character of the inferior courts.

As the business of the inferior state courts is more voluminous than important, each judge holds court separately, whereas in the higher courts all the judges constituting the court usually sit together for the trial of cases. That all of these judges are really state officers, even when elected by the localities, may be shown by the statement

that they are removable in most of the States by the legislatures, either through impeachment or by a majority vote of both houses.

Character of judicial duties.

195. The Necessity of an Upright Judiciary in a Republic. — In a country whose political institutions are as popular in character as ours, the need of an able and upright judiciary is imperative. Our judges must not only explain the meaning of the laws but of the constitutions as well, and if they are corrupt or are subservient to any particular interest or set of persons, justice will be "sold, delayed, and denied," and the fundamental rights of freemen will be refused to us. An ignorant judge is but little less dangerous to the public welfare and to individual security than a corrupt justice, and every possible precaution must be taken to secure men of ability as well as of integrity. When, as is the case in most of the States, the salaries paid the highest judges are but a tithe of the income of prominent lawyers, the honor of holding the position must be made the chief attraction to jurists of ability. If we elect as judges men of inferior standing, men whose business is politics rather than the law, or men who seek places on the bench through dishonorable means and who use them for personal or partisan ends, we must expect a judiciary that does not command respect, and which, in the long run, will defeat the popular will and bring our free institutions into disrepute.

The Administration of Justice

Criminal cases.

196. The Distinction between Civil Suits and Criminal Cases. — The courts aim to administer justice by considering all cases brought before them by some person or body of persons who claim to have been injured by the act of another. If the act is of such a character that it affects

the general public as well as the party directly wronged, the act is considered a crime, and the prosecution of the alleged wrongdoer is begun by the representative of the people. For example, robbery, arson, and murder are so inimical to the public, that the punishment of the offender could not wisely be left to private parties, however grievously they had been wronged. On the other hand, disputes over land titles, failure to pay promissory notes, or neglect to perform a contract, involve comparatively little injury to the public, and cases relating to these subjects are termed "civil suits."

Civil suits.

197. The Beginning of a Civil Suit. — When a party begins suit against another before a court of law, he is known as the "plaintiff," the party against whom action is brought being called the "defendant." The first step is taken by the plaintiff in a paper called the "writ," in which are set forth the injuries alleged to have been done by the defendant. The reply of the defendant contains a statement presenting the facts of the case from his point of view, or it may admit that the facts are as stated by the plaintiff, but assert that they do not constitute sufficient ground for the lawsuit; in other words, that the defendant has done the plaintiff no legal wrong. Additional replies may be necessary to determine exactly what is in dispute between the parties. When all of these have been given, the "pleadings" end, and the case is ready for trial in court.

The parties.

Pleadings.

198. The Completion of a Lawsuit. — Lawsuits are usually tried by judges, although in most of the States either party may claim the right of jury trial. Evidence is presented, first by the prosecution and then by the defense, witnesses being called and examined by the attorney who brought them to court, and afterward cross-examined by the opposing counsel. An opportunity is then given each side

The trial.

to refute statements brought out in the latest evidence of the other, and for the arguments of the attorneys. If there is a jury, the judge gives it his "charge," showing what the law of the case really is, and what bearing the evidence has on the law. In that event, the verdict is rendered by the jury, otherwise the judge decides both the law and the fact. The successful party is later furnished with a writ of execution to cover costs, or costs and damages. This writ may be enforced by the executive officer of the court against the property of the party named, so as to satisfy judgment. In almost all the States, however, homesteads and household furniture are exempt from seizure.

Execution.

Arrest and examination.

199. The Beginning of a Criminal Prosecution. — Persons suspected of having committed crimes are arrested upon warrants which state the cause of the arrest, or without warrants, if caught under suspicious circumstances. After a brief period in jail, they are brought to trial either upon "information," a charge made against them by a public prosecutor, or upon "indictment," a formal accusation indorsed by a grand jury, the latter method being prescribed by many of the state constitutions, if the accused is thought to be guilty of a felony.

Court proceedings.

200. The Trial of an Accused Person is begun by reading in open court the charge against him and giving him a chance to plead guilty or innocent. If his answer to the question is "not guilty," the court provides him with counsel — unless he has already retained the services of a lawyer — and a jury is selected at once. Many citizens have already been summoned for jury service, and, as the names of these are drawn by lot, each is questioned by the attorneys for the State and the defense, in order to learn whether he has already formed an opinion regarding the guilt of the accused, or is biased in any way that would

A Court-room Scene.
(With witness and jury at the extreme right.)

affect his vote on the final verdict. If objectionable, he is dismissed. When twelve men satisfactory to both sides have been selected, the prosecution calls its witnesses and the trial proceeds in much the same way as in a lawsuit.

Verdict. When the evidence is all in and the closing arguments have been heard, the judge instructs the jury as to the law, and the jurymen withdraw until a verdict has been reached. If declared innocent, the accused is at once set free; if found guilty, his lawyer will probably appeal the case to a higher court, or ask for a new trial; and, if the jury disagrees, he will be held for another trial, as legally no trial has taken place.

Sentence. If guilty, sentence is pronounced by the judge, usually without delay, the court having discretion as to the advisability of giving the convicted party the maximum or the minimum punishment provided by the law for crimes of that class.

The Jury System

Grand juries. **201. The Kinds of Juries.** — Juries are of three kinds. (1) Grand juries, which are composed of from twelve to twenty-three men, hold secret sessions, and either investigate the causes of crimes that have been committed, bringing indictments against those they believe guilty, or investigate the condition of the departments of government and their expenditures of money. **Petit juries.** (2) The petit or ordinary jury of twelve men settles most civil disputes and decides criminal cases. **Police juries.** (3) The police jury consists of six men and determines the guilt or innocence of persons accused of committing misdemeanors. When any of these juries serves for the entire term of a court they are known as term juries; otherwise they are special juries.

202. Who may serve on Juries. — Only citizens are allowed to sit on juries. On account of the inconveniences of jury service, practically all professional men are exempt by law from jury duty, and on account of the annoyance caused by being taken from their business, most of the other prominent men of the community shirk jury duty as far as possible. In some States juries are "drawn" from a list of those liable to service, and a summons served upon those chosen to appear at court on a certain day. In other States jurymen are selected by jury policemen who serve the summons on those whom they find on the streets or at their places of business.

Ex-emptions.

Drawing juries.

Civil suits.

203. The Extensive Use of the Jury System. — Although jury trial may be waived with the consent of both parties in suits at law, and although certain suits which deal with complicated matters are tried without juries in courts of equity, nevertheless the decision in the great majority of civil suits tried in the United States still rests with juries composed of citizens.

Criminal cases.

In criminal cases, jury trial may not be required by the defendant, but, in trying persons for misdemeanors, or minor crimes, it is customary to have juries, while in cases where the crime amounts to a felony, the guilt of the accused is always determined by a jury.

Nevada, California, Washington, Idaho, Utah, Montana, and Nebraska do not require a unanimous vote to render a verdict in civil suits, and Idaho allows five sixths of the jury to decide cases involving minor crimes. In all of the other States, a unanimous vote of the jurymen is essential to a verdict.

Advantage to accused.

204. Advantages of Jury Trial. — Juries are an advantage both to the accused and to the juryman. To the former, because the facts connected with his guilt and innocence are viewed from the standpoint of common sense rather than of law. The jury disregards technicalities, but places the

emphasis upon the right or wrong involved. It takes into account the circumstances, the motive, and the consequences, so that if it errs at all, it errs on the side of leniency.

Benefits to jurymen.

To the citizen, the jury gives opportunity for civic education. It brings him into touch with the work of administering the law, and makes him part of it, and, in so doing, gives him clearer conceptions of legal rights and methods, and fits him to exercise his duties as a citizen with greater knowledge and to better purpose.

Abuses and defects.

205. The Disadvantages of Jury Trial. — The main question is whether these advantages are worth what they cost, whether they apply to all forms of jury trial, and whether they are not, after all, but partially secured on account of the numerous exemptions from jury duty. Certain it is that the exemption of professional men, and the frequent refusal of attorneys to accept as jurymen men who have formed opinions regarding the case to be tried, have given rise to a popular belief that only the ignorant are desired as jurors — a belief not well founded in most localities. In any civil case involving knotty problems of law, the ordinary juror is almost of necessity incompetent to render a just decision, while in a lawsuit or criminal case where a strong appeal can be made to the emotions or to prejudice, the jury is likely to be unduly influenced in its verdict. The fact that a lawyer who has a weak case almost invariably asks for a jury trial is an indication that the jury errs often on the side of leniency. In short, unrepresentative of the communities as our juries must be under present conditions, they often defeat the ends of justice, in civil suits, through their ignorance, and in criminal cases, through their prejudice.

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Practical Questions

1. How many grades of courts are there in this State? Give the name of each.

2. How many judges constitute the highest court? How are they selected? What is their term of office? Where are the sessions of the highest court held?

3. Answer the same questions for the lower courts.

4. How are jurymen selected in this locality? Do they serve without pay? Who are exempt from jury duty?

PART II

NATIONAL GOVERNMENT

CHAPTER XVII

THE BEGINNINGS OF UNION

206. The Development of our National Government. — We cannot have a national government without a united people to be governed. There was in consequence no national government in America during the colonial period, because the colonies were separate from one another. During the Revolutionary War, a central government for the union of the new States became necessary to raise armies, obtain money, and look after foreign affairs, but this government was not truly national. It was only in 1787, when the present Constitution of the United States was proposed by a convention at Philadelphia, and ratified by conventions in the States, that a national government was formed, which has grown more powerful and more useful to the Nation as the people have become more united.

Conditions affecting its development.

Temporary Unions before 1781

207. The New England Confederation. — In colonial times, the chief cause of union among the colonies was a fear of the Indian tribes. In 1643 the four little New England colonies of Massachusetts Bay, Plymouth, Connecticut, and New Haven — none of which covered as much as two thousand square miles of settled territory — organized the New England Confederation for mutual defense against the Dutch and the Indians. The central

Composition, purpose, and work.

government was nothing more than an advisory body, composed of two commissioners from each colony. It was expressly forbidden to interfere with the governments of the colonies, and had only power to suggest how much money and how many men were needed for intercolonial protection. This Confederation nominally lasted about forty years, and, although it was able to accomplish very little, showed the colonies that by uniting they might render one another valuable help in time of need.

Purpose.

208. The Albany Plan of Union (1754). — During the wars that the English were obliged to wage with the French settlements in Canada and around the Great Lakes, several congresses were held to devise plans for attack or defense. The most important of these was held at Albany in 1754, to make a treaty with the Iroquois Indians which would prevent their aiding the French in case of another war. Delegates from seven colonies were present, and much of the time was spent considering a plan proposed by Benjamin Franklin for a military union of all the colonies. As finally adopted, this plan arranged for a president-general, appointed by the English King, who was to be commander-in-chief of the colonial army. Money was to be raised and expended for defensive purposes by a grand council composed of a number of representatives from the different colonies proportional to the amount which each paid into the common treasury. This plan was universally condemned by the legislatures of the colonies, and failed of approval in Great Britain. The remark made by Franklin regarding this action shows at once the reason for its failure, and the feeling of the colonies and the Crown toward each other. "The assemblies did not adopt it as they all thought there was too much *prerogative* in it, and in England it was judged to have too much of the *democratic*." The time was not ripe

Franklin's plan.

for concerted action; nothing less than a great national movement could create a widespread demand for union.

209. Conditions affecting Union. — The colonies were still as separate and distinct as different nations might have been. New England had little in common with the Carolinas, and many of the Puritan customs and occupations, as well as the general trend of thought, were different from those of the South. Provincial narrowness and prejudice were very pronounced, for the people of one colony had not been broadened by contact with the inhabitants of another. **Unfavorable conditions.**

Yet all the elements of union were there. Practically all of the colonists were Englishmen, the language was everywhere the same, the colonial systems of law were invariably built upon the common law of England, and finally all were of the Protestant faith. Taken in connection with the proximity of the colonies to each other and consequent unity of interests, these conditions made union natural, and, if a common danger threatened, union became inevitable. **Favorable conditions.**

210. The Stamp Act Congress (1765). — A spirit of union among the colonists was aroused by the adoption of a new British colonial policy. In its effort to obtain from its American possessions revenue with which to pay the expenses of maintaining an army for their protection, the English Ministry, in 1764, asked Parliament to pass a law requiring that stamped paper be used for periodicals, deeds, wills, and other legal documents. This was done in 1765, and agents were appointed to sell the stamped paper, but the colonists protested because they thought that no internal tax could be levied upon them except by their assemblies (§ 115). The agents were compelled to resign, and feeling reached such a height that when Massachusetts suggested **The Stamp Act.**

Work of the congress.

a congress to express their views, nine of the colonies sent delegates who met in New York in October, 1765, and drew up a "Declaration of Rights," stating that their legislatures had the exclusive right of *taxation*.

Change of feeling (1765–1774).

211. The First Continental Congress (1774). — In the nine years that elapsed between the Stamp Act Congress and the meeting of the one known in history as the First Continental Congress, the colonies had been growing more and more discontented with the methods used by Great Britain in taxing and governing them. Indeed, one of them, Massachusetts, had become so unruly that her charter had been temporarily suspended and her regular government superseded by a military government. In consequence, when Massachusetts again called for a congress to protest against the acts of Parliament, all but one of the colonies, fearful that their own governments might be changed as Massachusetts' had been, managed to send delegates to Philadelphia, in spite of the attempts made by the colonial governors to prevent them. The Congress formulated another Declaration of Rights, claiming for the colonial legislatures the exclusive power of *legislation*[1] except in connection with foreign commerce. It completed its work by arranging that every town and village should have a committee to organize those who favored opposition to Great Britain. These committees, known as the American Association, formed the first real union of the American colonists.

The Congress.

The American Association.

Character.

212. The Second Continental Congress (1775–1781). — Unlike its predecessors, the Second Continental Congress was not a temporary body, for it remained in session six years without authority other than the written instructions given by the colonial legislatures to the delegates of which it was

[1] Subject however to the royal veto.

composed. It was still more unlike the preceding congresses in the character of the powers that it exercised. All of those that had met before 1775 were purely advisory bodies, content with a few suggestions, but the Second Continental Congress was executive and legislature in one. It organized an army and prepared a navy, regulated commerce, sent representatives to France and other countries, issued paper money, declared the united colonies free and independent of Great Britain, and proposed to the States the Articles of Confederation, by which the union of the States was legalized.

Powers.

The Confederation

213. Formation of the Confederation. — In June, 1776, when Congress appointed a committee to draw up a Declaration of Independence, a second committee was selected to write out articles of union, which should define more exactly the powers of Congress and the relation of the States to one another. The Articles of Confederation reported by this committee were debated in Congress during 1776 and 1777. Finally, in November of the latter year, they were adopted by that body with many changes, and referred to the state legislatures, for the Articles were not to become binding upon any State until ratified by all. Most of the States gave their consent without great delay, but Maryland refused to sign the Articles until her neighbor Virginia gave up her claims to that vast region in the West which Virginia had considered a part of her domain. For this reason, it took from 1776 to 1781 to form the first constitutional union of the States.

Action of Congress.

Ratification by the States.

214. The Objects of the Confederation are stated in the third article. "The said States hereby severally enter into a firm league of friendship with each other, for their com-

Limited character.

mon defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever." In doing this, however, each State claimed to retain "its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled."

Alliances and other things forbidden.

215. Prohibitions upon the States. — Nevertheless, there were several prohibitions placed upon the different state governments in order to prevent them from interfering with the work of Congress. They were not allowed to enter into negotiations, nor to make treaties or alliances, with one another or with foreign powers, without the consent of Congress. No army or navy could be equipped by a State, nor could any declare war, except in case of actual invasion. Duties were not to be levied by the States if they interfered with the enforcement of any commercial treaty made by Congress.

Citizenship.

216. Interstate Relations. — One of the chief advantages of the new union was the establishment of an interstate citizenship. The citizens of every State were "entitled to all the privileges and immunities of free citizens in the several States," and were allowed perfect freedom to come and go from one to another, doing business in which one they pleased. Full faith and credit was given in every State to the records and judicial proceedings of the courts and magistrates of every other, and, if a criminal fled from one State to another, he was to be given up to the officials of the State in which his trial was to take place.

State records.

Organization of Congress.

217. The United States Government under the Confederation. — The only central government consisted of a Con-

gress and such officers and committees as it might appoint. Each State was allowed to send to Congress from two to seven delegates, who were paid out of the state treasury and might be recalled at wish; but no State, however large it might be, had more than one vote. Each year the Congress selected a president to preside over its meetings, and a committee of one from each State which looked after the affairs of the United States when the Congress was not in session. In its executive work, Congress was also assisted by the three departments of Foreign Affairs, War, and Finance.

Theoretical powers.

218. The Powers of Congress. — In theory, Congress controlled all matters of common interest, such as making war or treaties, creating an army and navy, regulating the value of coin, arranging trade with the Indians, and settling interstate disputes regarding land claims, but scarcely any important law could be passed without the consent of nine States. To pay its expenses, it had authority to borrow money and emit bills of credit, but most of the revenue was to be obtained directly from the States, each contributing the amount Congress thought just.

Weakness of Congress.

219. The Defects of the Confederation. — In practice, Congress was left at the mercy of the States. The requisitions made by Congress for money were paid grudgingly or ignored entirely, and, as Congress had no means of forcing the States to pay their shares, it was compelled to borrow for current expenses. Before long even this resource failed it, for its credit had become gradually poorer, until no one was willing to lend it money.

Need of an executive.

In executing the laws which it passed, Congress encountered the same difficulties as in collecting revenue. It had been given power to make laws not for the people, but for the States. As there was no separate federal executive, it would have been difficult to enforce the laws under the

most favorable circumstances, but, as Congress acted solely upon the state governments, it was utterly unable to coerce them if they cared to ignore its requests or its laws. For this reason, although Congress had the right to pass so many laws, there was danger that it might become absolutely helpless.

Proposed amendments.

220. The Failure of the Confederation. — In order to obtain the revenue without which it could not even keep up an appearance of activity, Congress asked the States for permission to lay duties upon goods imported from abroad. The first request was made in 1781 for a tariff of five per cent upon imports; but, as the Articles could be amended only by a unanimous vote of the state legislatures, and as Rhode Island would not consent to granting this power to Congress, the amendment failed of ratification. A second attempt to gain revenue from a similar source failed because only twelve States favored the proposal. Thus Congress, without money to pay its debts, without power to enforce its demands, became less and less useful, and at length not enough of its members attended its sessions to do business.

Internal disorder.

Meanwhile each State was regulating its own commerce with the other States and with foreign powers in any way that its own interests dictated, and a species of commercial warfare was being waged among some of the States. The only remedy for this condition of affairs was to have free trade within the States and uniform regulations for foreign commerce. It was therefore evident that more power must be given to Congress, or that a new central government must be established.

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Ashley, *The American Federal State*, §§ 77–105.
Channing, *Students' History of the United States*, §§ 113–178.
Fiske, *Critical Period of American History*, pp. 50–220.
Curtis, *Constitutional History of the United States*, I, pp. 1–220.

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THE STAMP ACT: Channing, *Students' History*, §§ 119–126; Fiske, *American Revolution*, I, pp. 14–27; (Woodburn), Lecky, *American Revolution*, pp. 67–96; Frothingham, *Rise of the Republic*, pp. 163–200.

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1. Franklin's plans of union. Frothingham, *Rise of the Republic*, pp. 141–144, 433–434.

2. The Committees of Correspondence. Frothingham, *Rise of the Republic*, pp. 261–284.

3. The Second Continental Congress. Curtis, *Constitutional History of the United States*, I, pp. 20–26.

4. Declaration of Independence. M. C. Tyler, in *North American Review*, 163 (1896), pp. 1–16.

5. Commercial discriminations of the States under the Confederation. Fiske, *Critical Period of American History*, pp. 142–147.

6. The nationalizing influences of the public domain. Fiske, *Critical Period*, pp. 187–196.

7. Did the Confederation represent a higher type of union than that existing in 1776? Give your reasons in full.

CHAPTER XVIII

GENESIS OF THE CONSTITUTION

Proposal of the conference.

221. The Annapolis Conference. — The proposal for a revision of the Articles of Confederation came in a very unusual and quite informal way. Maryland and Virginia had been discussing whether they should appoint commissioners to consider the navigation of the Potomac river, the southern bank of which formed the boundary between the two States, and to arrange a uniform system of tolls and duties. A few farsighted leaders in the Virginia legislature thought it would be a good idea to invite the other States to appoint commissioners who should meet with these at Annapolis, and talk over the subject of interstate and foreign commerce. This was accordingly done, but only five of the States were represented at the Annapolis conference which met in September, 1786, although nine had selected commissioners. Most of these men realized that only by increasing the power of Congress over commerce could the existing commercial difficulties be settled. They consequently adopted the suggestion made by Alexander Hamilton, that the Congress then in session be asked to call a convention to meet in Philadelphia the next year. After revising the Articles of Confederation, the convention was to submit its suggestions to Congress and the state legislatures.

Meeting of the conference.

The Convention at Work

222. The Meeting of the Philadelphia Convention. — It would naturally be supposed that Congress would favor any movement to increase its own power, but, actuated by jealousy, it refused to sanction a constitutional convention. But so urgent was the need for some change that the state legislatures proceeded to elect delegates, and, after the majority had chosen representatives, Congress gave its consent. We must bear in mind that this convention was called solely for the purpose of *revising the Articles of Confederation*, and not with any idea of making a new constitution. Fortunately the States had elected some of their ablest men as delegates, and these men did not hesitate to proceed at once to form a Constitution of an entirely different type, because they believed the Articles of Confederation could never be amended so that they would be satisfactory. They thought that the Articles were built upon a wrong foundation — state sovereignty — and they therefore decided without delay to frame a constitution that should rest not upon the States alone, but upon individual citizens. The foresight, wisdom, and courage of "the Fathers," as the members of the convention are often called, in taking this important step has not been questioned by any succeeding generation.

Purpose of the convention.

223. The Convention Organized. — The first regular session was held on May 25, 1787, with delegates from nine States present. All of the others except Rhode Island were also represented most of the four months during which the convention held its meetings. Popular confidence was assured from the start because the delegates included such men as George Washington, the nation's idol, Benjamin Franklin, who had gained for us help from France during the Revolutionary War, James Madison, Roger Sherman,

General.

The delegates.

Oliver Ellsworth, John Dickinson, James Wilson, John Rutledge, Charles Pinckney, and Alexander Hamilton. Nevertheless it was deemed wise to make the sessions secret, in order that the people might not be prejudiced because of any differences of opinion in the convention, and that they might not be asked to judge of the revision, until it was completed. Behind closed doors, the convention began its work by choosing George Washington chairman, and by agreeing that each State should have one vote as in Congress.

Congress.

224. The Virginia Plan. — The first serious work of the convention began when the delegates from Virginia suggested a plan which had been drafted by Madison for a central government entirely different from that of the Confederation. This outline, known in history as the "Virginia plan," favored a Congress of two houses, the members of the lower house to be chosen by the people, and those of the upper house to be chosen by the lower from candidates nominated by the state legislatures. This Congress was to have "the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation."

Executive and judicial departments.

The new scheme provided for an executive department, which it will be remembered the Confederation did not have, but the plan did not state whether there should be only one executive like our President, or a council like the English ministry. Finally there was to be a national judiciary to decide cases that came up under the laws made by Congress. This Constitution was to go into operation when adopted by conventions chosen especially for that purpose in the different States.

225. The New Jersey Plan. — The convention went into committee of the whole and discussed the Virginia plan for several weeks, the majority being heartily in favor of its resolutions. But several of the delegates from small States considered it too radical, as they feared to grant so much power to a government that might be controlled by the large States. These men drew up revised Articles of Confederation, which are usually called the "New Jersey plan," because offered to the convention by William Patterson of that State. This plan proposed an enlargement of the powers of the old Congress by giving that body the right to levy duties and other taxes, and provided for an executive and a national system of courts. After a rather brief debate, the committee of the whole adopted the Virginia plan with some modifications, and reported to the convention.

Objections to the Virginia plan.

Provisions of the New Jersey plan.

226. The Connecticut Compromise. — Although a Congress of two houses seemed preferable to a single chamber, the convention was divided on the question of how it should be composed. The large States naturally wanted the number of members in both houses to depend upon the population of the States represented, but the small States insisted that one or both should be like the Confederate Congress, in which each State had one vote. Over this question of representation there was a long and bitter debate which was finally settled by adopting a compromise proposed by the Connecticut delegates. By this first, and perhaps greatest, of the compromises for which the United States has been famous, each State was to be represented in the lower house according to its population, and the Senate was to be composed of two senators from each State, each of whom, unlike the delegates to the Confederate Congress, had a vote of his own.[1] To pacify the

Contest between the large and small States.

Provisions of the compromise.

[1] This is the compromise in its completed form.

large States, the House of Representatives was to have the exclusive right to introduce measures for the raising of revenue.

Direct taxes and apportionments.

227. The Three Fifths Compromise. — The convention had already decided that when direct taxes were levied, each State should contribute according to its population, so that an enumeration of the people was now necessary for the assessment of direct taxes as well as for representation in the House of Representatives. We might imagine that it would be a very simple matter to count the number of people in a State, but the convention had more or less trouble with this question because of the slaves which were very much more numerous in the South than in the North. Were they to be counted the same as whites? Of course, the Southern delegates did not wish the negroes counted when direct taxes were paid, but they did wish them to be enumerated when representatives were apportioned. The North wanted the opposite in both cases, so that a compromise was adopted, by which five negroes were counted as equal to three whites when reckoning the population for either direct taxation or representation.

Counting of negroes.

Demands of North and South.

228. The Compromise over Navigation Acts and the Slave Trade. — The last compromise as well as the second dealt with the question of slavery. The extreme Southern States demanded the right to import slaves without restrictions, but practically all of the others were opposed to the slave trade. In the North commerce was the chief industry, and the New Englanders insisted that navigation acts should be passed by Congress in the same manner as ordinary bills. The South, on the contrary, believed that her agricultural interests would be in danger, unless a two thirds vote was required for all laws relating to commerce. These sectional differences made necessary the last great compromise. The

The compromise.

South agreed to permit the passage of navigation acts by a majority of each house of Congress, in return for the privilege of importing slaves for twenty years, or until 1808, the tax upon these slaves not to exceed ten dollars per head.

229. Completing the Work of the Convention. — It must not be thought that all of the time of the convention was devoted to settling disputes. Week after week the work progressed slowly but surely, points being settled quickly if little difference of opinion existed, but often delayed by debate and honest differences of opinion. What was essentially the Virginia plan was used as the foundation upon which the new Constitution was erected, and on September 17, 1787, the document was completed and signed by delegates from twelve States. **Progress of the work.**

Madison closes his "Debates" which are our chief source of information regarding the sessions of the convention, with this very suggestive account. "Whilst the last members were signing, Doctor Franklin, looking towards the president's chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that painters had found it difficult to distinguish in their art, a rising, from a setting, sun. 'I have,' said he, 'often and often, in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the president, without being able to tell whether it was rising or setting; but now at length, I have the happiness to know that it is a rising and not a setting sun.'" **The closing session.**

Ratification of the Constitution

230. Feeling of the People toward a New Constitution. — Before the Constitution could go into effect, it was to be ratified by conventions called in the different States for that purpose. If accepted by nine of these States, it went into effect "between the States so ratifying the same." When we consider, however, that the Philadelphia conven- **Prejudices to be overcome.**

Done in Convention by the Unanimous
Day of September in the Year of our Lord one
of the Independance of the United States of
We have hereunto subscribed our Names,

Delaware
Geo: Read
Gunning Bedford jun
John Dickinson
Richard Bassett
Jacob Broom

Maryland
James M'Henry
Dan of St Thos Jenifer
Dan Carroll

Virginia
John Blair
James Madison Jr

North Carolina
Wm Blount
Rich: Dobbs Spaight
Hu Williamson

South Carolina
J. Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler

Georgia
William Few
Abr Baldwin

LAST SECTION OF THE CONSTI

Consent of the States present the Seventeenth
thousand seven hundred and Eighty seven and
America the Twelfth IN WITNESS whereof

G° Washington — Presid.
and Deputy from Virginia

New Hampshire { John Langdon
Nicholas Gilman }

Massachusetts { Nathaniel Gorham
Rufus King }

Connecticut { Wm Saml Johnson
Roger Sherman }

New York . . . Alexander Hamilton

New Jersey { Wl. Livingston
David Brearley.
Wm Paterson.
Jona: Dayton }

Pensylvania { B Franklin
Thomas Mifflin
Robt Morris
Geo Clymer
Tho: FitzSimons
Jared Ingersoll
James Wilson
Gouv Morris }

TUTION, WITH SIGNATURES.

tion had possessed no legal authority to frame a national Constitution, that the mass of the people did not fully appreciate the evils of the Confederation, and that even those who did were so attached to their state governments that they were unwilling to surrender any of the State's authority to Congress, we can see that the outlook for ratification was by no means bright.

Resolutions of the convention.

When the Constitution had been completed in the convention September 17, it was signed by all of the delegates present except three, and a copy was forwarded to Congress with two resolutions. The first requested that the draft of the Constitution be approved by Congress and submitted to conventions called in the different States by their legislatures. The second resolution suggested that, when it had been accepted in nine States, Congress should select a day for choosing presidential electors and a day for electing congressmen. On September 29, 1787, Congress did as requested in the first resolution, and within a few months practically all of the States had called conventions to consider whether they should give their approval.

Character of the Federalists.

231. The Federalists and the Anti-Federalists. — No sooner had the convention adjourned than the members, who had returned to their respective States, and other advocates of the proposed government, began to organize their followers so as to secure the necessary ratification. Though few in numbers at first, they included most of the able and progressive political leaders, and, by skillful management and forceful argument, won over to the side of the Constitution the doubters, and many who at first opposed the change. These men were known as the Federalists, while those who favored a government like that of the Confederation, in which the States practically controlled Congress, were called the Anti-Federalists. The latter had quite an advantage because the people as a whole were prejudiced in favor of state supremacy, and did not relish a change that strengthened the national government at the expense of the States.

Advantages of the Anti-Federalists.

The discussions over the Constitution produced a large number of able papers from the advocates or opponents of the new plan. Among these, a series discussing the whole situation and the provisions of the Constitution in detail has become famous among political documents under the title of "*The Federalist.*" The authors were Alexander Hamilton, James Madison, and John Jay, and their commentary stands to-day as the ablest exposition of the Constitution in existence. "*The Federalist.*"

232. The First Nine States. — The good work that the convention had done in pacifying the small States by adopting the Connecticut compromise, was shown in the readiness with which the small States accepted the Constitution. In Delaware, after a very brief session, it was ratified unanimously on December 6, 1787, while in New Jersey and Georgia came unanimous votes but little later. Pennsylvania was the first of the large States to fall into line, her convention on December 17, deciding in favor of the new government by a vote of 46 to 23. The small States. Pennsylvania.

The New England States decided a little less promptly. Connecticut gave its approval without great delay, but the New Hampshire convention adjourned without action, and the stormy debates in the Massachusetts convention lasted a month. Nowhere was the attachment to local government so strong as in the Bay State, and the opposition made a strong plea on the ground that the new Constitution would be a menace to state rights and individual liberty. The Massachusetts convention was finally persuaded to ratify, on condition that the majority ask Congress to submit to the States a number of amendments. New Hampshire later gave its consent by a close vote, but not until both Maryland and South Carolina had ratified. This was the last of the nine States necessary for the establishment of the Constitution. New England. The ninth State, June 21, 1788.

233. The Later States. — Conventions were in session in both Virginia and New York when New Hampshire Virginia and New York.

gave its decision. In the former the vote was taken four days later, resulting in a small majority for the Federalists. Here again the agreement was made to ask for certain amendments, embodying a bill of rights similar to those in the state constitutions. The New York convention continued to debate the question for several weeks, during which the masterly arguments of Alexander Hamilton converted enough of the Anti-Federalists to give to the Constitution a majority of three. North Carolina and Rhode Island did not ratify at this time, the former entering the Union in November 1789 and the latter in May, 1790.

North Carolina and Rhode Island.

Preparations for the new government.

Meanwhile Congress was making its preparations to inaugurate the new government. Almost exactly a year after the members of the Philadelphia convention had signed the Constitution, the Congress of the Confederation named the first Wednesday in January, 1789, as the day for selecting presidential electors, and the first Wednesday in March for the first meeting of Congress under the Constitution.

Provisions of the New Constitution

Contrast with the Articles.

234. The Preamble shows that the new government was to be radically different from the old, for the Union was no longer a "firm league of friendship" formed by the States, but a United States which represented a united people. As the preamble expresses it, "WE THE PEOPLE of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America."

235. Grant of Powers to the United States Government. — The work intrusted by the people of the United States to their new central government was carefully stated in the Constitution. It was in the form of a grant of powers made to Congress, which that body might exercise by making laws which the President should enforce and the courts interpret. These powers were so much more numerous than those formerly permitted to the Congress that the new Congress cannot rightly be considered the successor of that of the Confederation. The one was a feeble dwarf, the other a powerful giant.

Character of the grant.

Under the Constitution, taxes of almost every conceivable kind might be imposed, not upon the States but upon individuals, so that a failure of revenue was not again probable. All foreign and interstate affairs, including the regulation and control of commerce, were left to Congress. It had the right to declare war, to raise an army and construct a navy, unhampered by any requirements that the States should be consulted before these powers could be used. Many other powers were conferred, among them the right to make laws for the public territory, and to admit new States. Congress might make any laws that were "necessary and proper" for carrying into execution these powers which had been expressly enumerated in the Constitution, and all other powers granted to any department or officer of the new government.

Enumerated powers.

To make less probable the interference of the States with Congress, prohibitions were placed upon them denying them the right to make treaties, lay duties, declare war, or attempt other things without the consent of Congress. And to make assurance doubly sure the Constitution expressly declared that the Constitution, the national laws, and the treaties should "be the supreme law of the

Prohibitions on the States.

land." The lesson of inefficiency taught by the Confederate Congress had been well learned.

236. The Departments of the New Government. — The machinery of government under the Constitution was as much more elaborate than that of the Confederation as the new powers were more complete than the old. The law-making branch was still called Congress, but there were now two houses. In one of these, the Senate, each State had two members; in the other, the House of Representatives, the number depended on the State's population, although every State had at least one. The senators were to be chosen by the state legislatures for six years, one third retiring at a time, but the representatives were to be elected by popular vote every second year. The President, who had all of the executive power, was to be chosen for a term of four years by electors equal in number to the representatives and senators from the States, and all United States judges were to be selected by the President and confirmed by the Senate, holding office thereafter during good behavior.

Congress.

The President.

The judges.

Methods of amendment.

237. Amendment of the Constitution. — The evils of the Confederation might have been partially avoided but for the provision of the Articles that there must be no amendment without the consent of all of the States. That changes might be made in the Constitution as need arose, two methods were provided for proposing amendments to it; first, by two thirds of both houses of Congress, second, by a convention called at the request of two thirds of the state legislatures. If these proposed amendments were ratified by three fourths of the state legislatures, or by conventions elected in three fourths of the States for that purpose, they became parts of the Constitution. Strangely enough all of the fifteen amendments that have been adopted were proposed by Congress and ratified by the state legislatures.

One clause of the Constitution — that giving the States equal suffrage in the Senate — cannot be amended except by the consent of every State. **The excepted clause.**

General References

Walker, *Making of the Nation*, pp. 19–62.
Hinsdale, *The American Government*, pp. 87–143.
Fiske, *The Critical Period of American History*, pp. 213–345.
Bancroft, *History of the United States*, VI, pp. 195–474.
Curtis, *Constitutional History of the United States*, I, pp. 221–697.
Madison, *Debates in the Federal Convention*, Scott's ed.; also Vol. V of Elliott's *Debates*.

Topics

THE CONNECTICUT COMPROMISE: Fiske, *Critical Period*, pp. 244–253; Bancroft, *History of the United States*, VI, pp. 246–269; Curtis, *Constitutional History*, I, pp. 386–420; Madison's *Debates*, pp. 251–357.

DISCUSSIONS OVER METHOD OF ELECTING THE PRESIDENT: Stanwood, *History of the Presidency*, pp. 1–9; Fiske, *Critical Period*, pp. 277–285; Bancroft, *History of the United States*, VI, pp. 326–340.

SOURCES OF THE CONSTITUTION: Curtis, in Winsor's *Narrative and Critical History of America*, VII, pp. 237–246; A. Johnston, in *New Princeton Review*, IV (1887), pp. 175 *et seq.*; Bryce, *American Commonwealth*, abridged ed., Chapters II–IV; Taylor, *English Constitution*, I, pp. 1–79; Robinson, in *Annals of American Academy of Political Science*, I, pp. 203–243.

Studies

1. Why was a new constitution necessary? Hamilton, *The Federalist*, Nos. XV, XVI, XXI, XXII.

2. Compare the New Jersey plan with the Articles of Confederation, noting similarities and differences. "New Jersey Plan," in Madison's *Debates*, pp. 163–167.

3. Compare the Constitution with the Virginia plan, noting especially what features of the Virginia plan were dropped. Consult Ashley, *American Federal State*, §§ 109–111, and Madison's *Debates*, pp. 59–64.

4. Examine the work of the Committee on Detail. Madison's *Debates*, pp. 449–462.

5. Patrick Henry's arguments before the Virginia Convention. Curtis, *Constitutional History*, I, pp. 663–671.

6. Hamilton's victory in New York. Curtis, I, pp. 674–680, 684–687.

7. Why was it a blessing that the Articles of Confederation could not be easily amended?

8. Notice the first three objects of the Constitution as stated in the preamble, and show what specific difficulties were to be removed. Fiske, *Critical Period*, Chapter IV.

Practical Questions

1. How many members were elected to the convention? How many were present on the last day? Of these, how many refused to sign? Hinsdale, *American Government*, §§ 188, 197.

2. Which state convention ratified by the narrowest margin? Which ones were unanimous? Which proposed the most amendments? McMaster, *History of the People of the United States*, I, p. 501, note.

3. What is the difference between the qualifications of senators and representatives? Constitution, Art. I, §§ 2, 3.

4. Which were the "small States," according to the apportionment of representatives in the Constitution? Art. I, § 2.

5. What special powers has each house of Congress? Constitution, Art. I, §§ 2, 3, Amendment 12. What is the penalty if convicted after impeachment? Art. I, § 3. Who may be impeached? Art. II, § 4.

6. What is the process of legislation? Art. I, § 7.

7. Name the chief powers of Congress. Art. I, § 8. Why is the name "elastic clause" a good one for clause 18, § 8, of Art. I?

8. What is meant by the writ of *habeas corpus?* by an *ex post facto* law? a capitation tax?

9. What restrictions are placed upon Congress in spending money? Constitution, Art. I, § 9, cl. 7; § 8, cl. 12. Give the chief prohibitions placed upon the States. Art. I, § 10.

10. May the President or a congressman accept a present from the King of England? Art. I, § 9, cl. 8.

11. Who may be elected President? Art. II, § 1, cl. 4. How is the President chosen? Amendment XII.

12. May the President pardon a person guilty of treason? How are treaties made? Art. II, § 2.

13. What national courts are created solely by law of Congress? Cf. § 415 with Constitution, Art. III, § 1.

14. What is treason? Art. III, § 3.

15. Could Congress create a State of East Texas without consulting the Texas legislature? Constitution, Art. IV, § 3.

16. Why are all state officials compelled to take oath to support the Constitution of the United States? Constitution, Art. VI, § 2; cf. § 261 of this book.

CHAPTER XIX

CONSTITUTIONAL CHANGES SINCE 1787

Social and industrial changes since 1787.

238. Introduction. — It is neither possible nor desirable that our Constitution or national government should remain unchanged during a century which has brought us a great expansion of territory, population, and national resources, and little less than a revolution in the means of transportation, methods of doing business, and in the national feeling of the people. As a matter of fact, during the debates of the Philadelphia Convention, one of the delegates went so far as to boldly assert that no one expected the Constitution they were then framing would be in use a century later. Yet so well did the "Fathers" do their work, that to-day the Constitution of 1787, with only fifteen amendments, is still the foundation of our federal Union and of our national government.

Character of constitutional changes.

We must not suppose, however, that the Constitution is really the same now as then. Its form is almost identical with that of a hundred years ago, but its spirit has been greatly modified. In 1790 the people were much more attached to their state governments than to that of the Nation, and in consequence the national government was not allowed to do many things that we consider perfectly proper, although *nominally* Congress had as much power then as now. This simply means that many of the chief changes in the Constitution since 1787 have not been made by constitutional amendments added to that document, but by a more liberal construction of the powers granted to the national gov-

ernment in the original Constitution. How the powers of the national government have been enlarged by a free interpretation of the Constitution and by usage, shall be explained briefly after examining the fifteen regular amendments.

The First Twelve Amendments

239. Adoption of a National Bill of Rights. — As we noticed in the last chapter, some of the States ratified the Constitution on condition that certain amendments be proposed which would protect the States and individuals from any possible invasion of their rights by the national government. The first Congress therefore passed, by the necessary two thirds vote of both houses, a number of amendments which taken together formed a Bill of Rights. Ten of these were ratified by three fourths of the state legislatures, and proclaimed by Secretary of State Jefferson, to be a part of the Constitution December 15, 1791.

Reasons for its adoption.

240. Provisions of the Bill of Rights. — The provisions of the first eight amendments, which are concerned with specific personal rights, may be classified under two heads. (1) Those that prohibit Congress from restricting individual rights. (2) Those which protect individuals brought before or on trial in United States courts. The first two amendments make it impossible for Congress to establish a state religion, or to deny any one religious liberty, freedom of speech and of the press, the right to petition the government, and to bear arms. The third and fourth prevent Congress from quartering soldiers in private homes without the consent of the owner, and from allowing national officers to search homes except by warrants that describe the property to be seized. The last four of the eight give accused persons the right to a speedy jury trial with every

Two classes of provisions

The first four amendments.

Amendments five to eight.

opportunity to prove their innocence. We should especially notice that no one of the eight attempts to prohibit the States from doing these things, for they are restrictions upon the national government only.

General character.

241. The Ninth and Tenth Amendments. — Lest individual citizens should not be fully protected by these detailed provisions, the ninth amendment goes on to state that "the enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people." To prevent encroachments upon the rights of the States as well as upon those of the citizens, the tenth amendment declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." Thus the chief objection to the Constitution, namely, that it was a menace to the liberty of the citizens and the rights of the States, was so far removed that the Anti-federalists, who had sought to prevent its adoption, ceased to exist as a political party.

Suits against States.

242. The Eleventh Amendment. — The States were, however, very jealous of their rights, and when the Supreme Court decided in 1792[1] that a State might be sued in a United States court by a citizen of another State or by a foreigner, a resolution for an amendment was proposed, which denied to the national courts jurisdiction of such cases. This was carried through Congress without difficulty, and was ratified by three fourths of the States before 1798.

Presidential elections.

243. The Twelfth Amendment. — It is quite remarkable that only one amendment has been necessary to correct defects in the organization or methods of the United States government. According to the original Constitution, the

[1] In *Chisholm* v. *Georgia*.

presidential electors were to name two candidates for President without specifying which should be President and which Vice-president. Then, in case of a tie vote, the House of Representatives was to select the President, the delegation from each State having one vote. Election in the House became necessary in the third presidential election (1800), Thomas Jefferson and Aaron Burr having seventy-three votes each in the electoral college. Because of party strife, the House did not decide in favor of Jefferson until sixteen days before the inauguration. To avoid a repetition of this difficulty, an amendment was adopted in 1804, which made it necessary for the electors to name the office for which each candidate was selected.

The War Amendments

Actual changes.

244. The Period between 1804 and 1865. — For over sixty years after the adoption of the twelfth amendment there were no changes in the written Constitution of the United States. Yet silently but surely, through a liberal interpretation of the Constitution and the use of powers about which no one thought at first, the national government gained in power and in prestige. This shows that the Constitution was undergoing a change, for the government of the United States derives all of its authority from the people through the Constitution.

Restrictions upon the States.

245. The Character of the Last Three Amendments. — We can see how differently the people felt toward the Constitution in 1789 and in 1865 by noticing that the first eleven amendments restricted the power of the United States government in certain respects, while the thirteenth, fourteenth, and fifteenth amendments placed certain limitations upon the States. The chief cause of the great war

that was fought upon American soil during the years from 1861 to 1865 was the institution of slavery — an institution which was under the control of the state governments, except in the territories, and which had been abolished in the North by the States long before 1861. When, therefore, the Southern Confederacy of slave States was beaten in the great struggle, the first thought of the North was to free the slaves, the second to give them the rights of citizenship, and the third to grant them the right to vote. In doing these things, the Nation through the national Constitution told the States that henceforth they must not countenance slavery, nor deny to any one the right of citizenship or suffrage because of his color.

Slavery.

246. The Thirteenth Amendment. — The first of the war amendments, the thirteenth amendment of the Constitution, was passed by two thirds of both houses of Congress early in 1865, and was ratified by the necessary number of States within less than a year. It provided that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

Citizenship.

247. Amendment Fourteen. — A little later many members of Congress felt that some of the former slave States were trying to reëstablish slavery by the passage of apprenticeship laws which restricted the freedom of the negroes. To avoid the dangers that might arise from such a possibility, an amendment was proposed making the blacks citizens, and providing that, if a State did not allow negro men to vote, the State's representation in the lower house of Congress should be correspondingly reduced. As the States which had belonged to the Southern Confederacy were obliged to accept this amendment before they were allowed

William H. Seward,
Secretary of State of the United States,
To all to whom these presents
may come, greeting:
Whereas the
Congress of the United States on
or about the sixteenth of June,
in the year one thousand eight
hundred and sixty-six, passed a
resolution which is in the words
and figures following, to wit:

Joint Resolution proposing an Amendment to the Constitution of the United States.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both Houses concurring,) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said Legislatures, shall be valid as part of the Constitution, namely:

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LA FAYETTE S. FOSTER,
President of the Senate pro tempore.

Attest:
EDWD. MCPHERSON,
Clerk of the House of Representatives.
J. W. FORNEY,
Secretary of the Senate. 33.

PROCLAMATION ANNOUNCING RATIFICATION OF AMENDMENT XIV (OPENING PAGE).

to select senators and representatives, this amendment was ratified by the constitutional three fourths of the States and declared to be a part of the Constitution, July 28, 1868.

The important provisions of the amendment regarding United States and state citizenship are explained in the next chapter, §§ 264–266.

Two kinds of restrictions.

248. Restriction of State Power by the Fourteenth Amendment. — The restrictions placed upon the States by the first section of this amendment are of two kinds, the one negative, because no State is allowed to abridge the privileges and immunities of citizens of the United States; the other positive, inasmuch as no State may "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." In other words, the amendment not only prevents the States from interfering with the rights which any citizen possesses by virtue of his United States citizenship (§ 265), but it says to the States, "if you take away from a citizen without due process of law any rights which he has because of his state citizenship, he will be protected in national courts." It is impossible to imagine such a restriction of state powers at the time the Constitution was adopted, and this shows clearly how much more united the people of the Nation were in 1868 than in 1787.

Suffrage.

249. The Fifteenth Amendment became a part of the Constitution in 1870, five years after Lee had surrendered to Grant at Appomattox. Its real and avowed purpose was to grant the ballot to the freedmen, for it provided that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color, or previous condition of servitude."

The Unwritten Constitution

250. What the Unwritten Constitution is Like. — As the written Constitution is brief and does not go into detail, it is supplemented in a great many respects by statutes and by customs. These determine how extensive the powers conferred by the Constitution really are, and in what ways the work of the national government shall be carried on. All of these statutes and usages which increase the duties of the central government as defined in the Constitution, or alter the methods proposed by it, may be called the "unwritten constitution."

The supplementary constitution.

251. The Three Most Important Features of the Unwritten Constitution may be stated as follows. (1) The whole body of law and custom supplementing the Constitution has greatly broadened that instrument and expanded the powers exercised under it. How the national government has been strengthened by a liberal interpretation of the Constitution, can be seen in the two succeeding sections. (2) The national government has become an essentially democratic government with its chief officials elected by the men of the Nation, and its principal departments directly responsive to the popular will. The history of the change from the government by classes which existed in 1789 to the government by the people of to-day, is the history of the extension of the elective franchise from landowners then to men now. This change has in fact been accomplished almost solely by alterations in the state laws regarding suffrage, as the Constitution allows the States to decide who shall vote even for national officials. (3) Secession from the Union is not possible, although the subject is not mentioned in the Constitution, and the right to secede was formerly claimed by many of the States located in different parts of the country.

Expansion of powers.

Popular government.

Secession.

Use of "Implied powers."

Constitution, Art. I, § 8, cl. 18.

252. Enlargement of the Powers of Congress. — The Constitution gives Congress the right to make any laws that are "necessary and proper for carrying into execution" the powers explicitly granted to that body. This has enabled Congress to make, upon subjects not mentioned in the Constitution, laws which have added greatly to the authority of the national government. For example, within less than two years after the Constitution went into operation, a bill was passed creating a United States bank, which not only issued a national currency but aided the government in doing its work. Fifteen years later, Congress, having been given authority to regulate foreign commerce, laid an embargo upon all commerce with France and England, thus prohibiting instead of regulating that branch of business. Vast sums have been spent in improving rivers and harbors, in laying out roads, and in giving free mail delivery and other postal facilities that the Constitution does not mention. Public lands have been lavishly given to corporations for transcontinental railways, and to the States for the improvement of the schools, without any direct constitutional authority. Paper money has been issued by the United States government both in times of war and peace, although the Constitutional Convention of 1787 was opposed to the exercise of that power by Congress. As these are but instances of an extension of authority that is becoming greater with national expansion, the development of the Constitution in this direction may be appreciated.

Election of the President.

Constitution, Art. II, § 1, cl. 2.

253. The Changes in the Presidency. — The members of the Constitutional Convention intended to have the President chosen for a term of four years by discreet men called electors, who were to use their own judgment in selecting the chief executive. We all know, however, that only the first two Presidents were chosen in that way, and that for a

long time presidential electors have been partisans who, having been elected by popular vote in the different States, must vote for candidates nominated by their respective party conventions. Nothing in the Constitution would prevent a President from holding office for several successive terms, as President Dias of Mexico as done, but custom, in the form of the "third term tradition," has fixed eight years as the maximum period of office for any President.

Administrative powers.

The power of the President has been greatly increased by the unwritten constitution. He was originally allowed to appoint all of the important national officials with the consent of the Senate, but nothing was said about his power of removal. Except for twenty years (1867–1886), he has not been obliged to consult the Senate in removing an official, and has thus been able to make all national executive officers responsible to himself, greatly to his own advantage.

Constitution, Art. II, § 2, cl. 2.

Treaty and military powers.

By virtue of their right to make treaties, several Presidents, beginning with Jefferson in 1803, have acquired vast territories, although the Constitution is silent on this subject. In protecting United States mails and United States property, our Presidents have likewise increased their power at home.

The Cabinet.

In carrying out his wishes, every President is aided by executive officers, nine of whom form an advisory Cabinet, a body not mentioned in the Constitution.[1]

General References

Ashley, *The American Federal State*, §§ 120, 212, 228–231, 554–562.

Hinsdale, *The American Government*, §§ 623–631, 644–652.

Bryce, *The American Commonwealth*, abridged ed., pp. 254–284.

McMaster, *With the Fathers*, pp. 182–221.

Tiedeman, *Unwritten Constitution of the United States.*

[1] Cf. Constitution, Art. II, § 2, clause 1.

Cooley, *Principles of Constitutional Law*, pp. 214–357.

Cooley, *et al.*, *Constitutional History as seen in Constitutional Law.*

Curtis, *Constitutional History*, Vol. II.

Studies

1. Hamilton's views on the doctrine of implied powers. MacDonald, *Select Documents of United States History*, pp. 81–98.

2. Discussion of Amendment XIV in Congress. Burgess, *Reconstruction and the Constitution*, pp. 73–79.

3. The development of the Constitution. Bryce, *The American Commonwealth*, abridged ed., pp. 271–284.

Practical Questions

1. May a person be tried twice for the same offense? Amendment V.

2. What rights has any individual to "life, liberty, and property"? Amendments V, XIV.

3. If a person is tried for murder in a United States court, where must the trial be held? Amendment VI.

CHAPTER XX

THE NATION AND THE STATES

Character of our federal system.

254. The Interdependence of the National and State Governments. — By the adoption of the national Constitution in 1787, the people of the United States created a federal system of government. This Constitution recognizes the existence of two spheres of government, the one national, including all powers which can be properly exercised only by a single government for the whole people, the other, state, including all other powers of government. Under existing arrangements, the national government and the system of state governments are dependent upon each other, for each does half of the work of governing the country, but neither can become subordinate to the other, for both are controlled directly by the people of the entire Union. To perform the task assigned it, each is complete within itself for certain purposes, but incomplete without the other for the great purpose it subserves — the government of the American people.

General Distribution of Powers

Provisions of the Constitution.

255. The Classes of Governmental Powers. — We find that the Constitution of the United States and its amendments define quite clearly the duties of the national government, and suggest the duties left in charge of the States. In that instrument, the attempt is made to grant the government of the United States all powers that the States could not sat-

isfactorily exercise, because united action was necessary. From the nature of the case, these powers belonging to the United States government were considered *delegated*, and were therefore *enumerated*. Those left to the States were to include all others, frequently called *residuary* powers.

Five classes of powers.

It is possible to distinguish five classes of governmental powers: —

I. Those granted exclusively to the national government by the Constitution of the United States.

II. Those reserved exclusively to the States.

III. Those powers which may be exercised by either the national government or the States, usually called concurrent.

IV. Powers denied to the national government by the Constitution.

V. Powers denied to the States by the Constitution.

Expressed and implied powers.

256. The Sphere of the National Government includes both exclusive and concurrent powers, but these are always delegated. Yet delegated powers may be either expressed or implied powers. No one nowadays denies that the United States government has the right to supplement the powers expressly stated in the Constitution, by such means as are reasonable and wise, to carry out these powers. That is, we are, in practice, broad constructionists of the phrase that Congress has the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers [Constitution, Art. I, § 8, cl. 1–17], and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

Exclusive powers.

Nevertheless, it is generally admitted that the United States government does not have exclusive powers, unless the Constitution expressly states that the power granted to the United States government is exclusive, or unless a

power which is given to it is, at the same time, denied to the States, or unless, from the very nature of the power, it could not be exercised by both the Nation and the States.

General character.

257. The Sphere of State Activity. — Although the States are excluded, either by express prohibition or by implication, from the greater part of national affairs, they control all other subjects of government except those denied to all governments, and consequently reserved to the people. Lest there should be doubt in any one's mind on that point, the tenth amendment says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." In this amendment we have given the means of determining whether a power is rightfully exercised by a State. This is done by finding out what does not belong to the State. If a power is given to the central government alone, or if it is prohibited to the States by the Constitution, it cannot be used; all other powers belong to the States, and can be exercised by the state governments unless the state constitutions forbid.

Private and criminal law.

As we noticed in Chapter X, this field in which the State is supreme is one of great importance, not only from the variety of the subjects included, but from their personal relation to the individual. Practically all matters belonging to the criminal and to the private law are regulated by the States, including laws regarding property, and the business and personal relations of one individual to another.

Administrative and socialistic functions.

The States have complete charge of all local government, of education, of the elective franchise, of most corporations, police duties, marriage and divorce, the poor, the delinquent classes, and public health. Legislation on these subjects, and the administration of the laws made upon them, may be left by the States to the state government or the local governments; but at present the control of the States over all of them is exclusive and absolute. In addition the States exercise the concurrent powers mentioned in the next section.

Taxation.

258. Powers concurrently exercised by the United States or the State Governments. — The general power of taxation may

be exercised by either the central or the state governments. Yet there are limitations placed upon either one or the other in regard to certain kinds of taxes; *e.g.*, the United States government cannot levy direct taxes except in proportion to the population, neither can it lay a duty on exports from the States at all, nor tax state property. The States cannot tax external commerce except with the consent of Congress and for the national treasury, nor can they tax national banks or national property. Otherwise, either government may tax what it pleases or borrow money, and it is only by custom that the taxes do not overlap.

Bankruptcies and the militia.

Several classes of concurrent powers are those which are left to the regulation of the national government, but in which the States may legislate in case the United States fails to take any action. The subject of bankruptcies offers many examples of this state of affairs, for Congress has not seen fit to maintain a national law during most of our history, so the States have in the interim passed laws suited to their own needs; but these become invalid as soon as the central government acts. The case of the militia is somewhat similar. Many details of the elections of representatives and senators may be controlled by Congress, but in default of national laws the States do as they please.

National and state courts.

In the concurrent jurisdiction of the United States and state courts we have an instance similar to these last classes. Many suits may be brought in either state or national courts at the option of the plaintiff, although the final decision in these suits always rests with courts of the Nation.

Regarding personal liberty.

259. Prohibitions on the United States Government. — The most significant prohibitions placed by the Constitution upon the national government exclusively are for the protection of the individual. Those given in the first eight amendments we have already considered (§ 240). In addition, the national government may not grant titles of nobility, pass bills of attainder, which deprive persons of life or property by act of legislature, enact *ex post facto* laws, which consider as crimes offences that were not criminal at the time they were committed, nor may it permit slavery. Congress is not allowed to define treason, for a definition of that all-important word is placed in the

Constitution, Art. I, § 9.

Constitution itself.[1] The privilege of the writ of *habeas corpus*, which gives an accused person the right of immediate trial, may not be suspended except in case of great danger. According to amendment V, no one can be "deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation."

Regarding uniform regulations.

There are other prohibitions or limitations less closely related to individual liberty, but intended rather to guard the States against discriminating legislation. No export duty can be levied by Congress, all duties on imports and internal taxes are to be uniform throughout the United States, and no commercial preference is to be given one State over another. When a direct tax is levied, it must be in proportion to the population as given in the last census.

For benefit of national government.

Constitution, Art. I, § 10.

260. The Prohibition on the States. — Prohibitions have been placed upon the States by the national Constitution for one of two reasons. (1) To prevent the States from interfering with the work of the national government. (2) To protect citizens of the United States from arbitrary action on the part of the state governments. In order to protect the government of the United States, the States are forbidden to make treaties or alliances with other States or foreign nations, to have an army or navy in time of peace, to lay imports, coin money, emit bills of credit, make anything but gold or silver a tender in payments of debts, and to pass laws impairing the obligation of contracts. Among the prohibitions or limitations for the protection of individuals are the following. No State shall grant a title of

For protection of individuals.

[1] The Constitution provides (Art. III, § 3) that "Treason against the United States shall consist in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

sought to prevent the organization of the national government. Their failure to make such an attempt is sufficient proof that they believe the central government would be less injured than themselves, by their refusal to take part in national elections. Moreover, it would be absurd to create, for the choice of a few national officials, local districts which had no connection whatever with the States and their subdivisions.

The execution of law.

263. The Unity of our Federal System is further emphasized in the working relations of the national and state governments. Each has its own duties, which are different, with few exceptions, from those of the other, and which it performs through its own officials. United States laws are enforced by national executive officers and interpreted by national courts, side by side with the laws of the States carried into effect by officials of the States. Every person within the boundaries of a State is subject therefore to the jurisdiction of the state and national governments. He renders obedience to both, because both are doing work assigned to them by the people of the whole Union. If, by any possibility, both try to force him to obey laws which relate to the same subject, but which are incompatible, he must determine, first of all, whether the national government has authority to make the law it wishes him to obey, and, if it has this right, he must obey it without question. If it exceeded its authority in passing the law, he must obey the state officials. Whether the obedience is rendered to officials belonging to the state government or to the central government, in reality it is rendered to the people of the United States, who are represented by both sets of these officials. In other words, his allegiance is not divided, for it is due to the people of the whole Nation, and to them alone.

American Citizenship

264. The Dual Character of American Citizenship. — Because of the arrangement for the government of our country by two authorities, state and national, it is customary to speak of the dual character of American citizenship. Every citizen is said to be a citizen of the United States and a citizen of a State. Those rights of citizenship which are protected by the national government, because they are directly connected with its work, a citizen is said to possess by virtue of his being a citizen of the United States. The rights he has under the government of the State belongs to him because he is a citizen of the State. With each form of citizenship are inseparably linked the obligations of obedience to the authority that protects him in the enjoyment of his rights.

Citizenship of the State and the United States.

The definition of a citizen is given in the fourteenth amendment. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." As Indians on reservations are not really "subject to the jurisdiction" of the United States, they are not citizens. All others born in this country or of American citizens abroad, are citizens.

Definition of citizenship.

Naturalization is either individual or collective. Collective naturalization occurs when a large number of persons are given the rights of citizenship by treaty, constitutional amendment, or congressional law. The process of individual naturalization is described in § 310.

Naturalization.

265. The Rights of United States Citizenship. — Among the privileges and immunities enjoyed by a citizen under the national government are the right to transact business with that government, "to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all

Rights protected by the national government.

operations of foreign commerce are conducted, to the subtreasuries, land offices, and courts of justice in the several States. . . .

"Another privilege of a citizen of the United States is to demand the care and protection of the federal government over his life, liberty, and property when on the high seas or within the jurisdiction of another government. . . . The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus*, are rights of the citizen guaranteed by the federal Constitution. The right to use the navigable waters of the United States, however they may penetrate the territory of the several States, all rights secured to our citizens by treaties with foreign nations, are dependent upon citizenship of the United States, and not citizenship of a State. . . . A citizen of the United States can, of his own volition, become a citizen of any State of the Union by a *bona fide* residence therein, with the same rights as other citizens of the State. To these may be added the rights secured by the thirteenth and fifteenth articles of amendment,"[1] and by clauses of the fourteenth.

Rights protected by state governments.

266. State Citizenship. — While no State can create citizenship by its laws, the larger part of the rights of citizens are left to the supervision of the state governments, just as the sphere of state activity is larger than that of the central government. It would be difficult to enumerate all of these rights, but among the most important are protection by the state government in matters over which it has control, right to life, liberty, and property, except as restrained for the general good, right to make contracts, to sue and be sued, to inherit, purchase, lease, hold, and dispose of real or personal

[1] Justice Miller of the United States Supreme Court, in the *Slaughter House Cases*, 6 Wallace.

property, and exemption from unjust taxation or unusual fines or penalties.

The franchise is not a right of citizenship. It is a political privilege conferred by a State upon such of its members as it deems fit to exercise such a privilege. *Voters and citizens are not the same.* There are usually more of the latter, but a State may confer the right of suffrage upon aliens if it wishes. It may also give an alien the rights of state citizenship, though it cannot make him a citizen.

The elective franchise.

General References

Hinsdale, *The American Government*, §§ 223–233, 419–445, 655–658, 763–772.

Ashley, *The American Federal State*, §§ 232–254.

Bryce, *The American Commonwealth*, abridged ed., pp. 224–253.

Studies

1. The advantages of federal systems. Ashley, *American Federal State*, §§ 235–237.

2. The working relations of the national and state governments. Bryce, *The American Commonwealth*, abridged ed., pp. 233–242.

Practical Questions

1. Enumerate the powers of Congress. Constitution, Art. I, § 8.

2. Name some of the implied powers now exercised by Congress. Hinsdale, *American Government*, § 414.

3. Tell whether the rights of a citizen would be protected in the following cases because of state or United States citizenship: (*a*) In inheriting property; (*b*) if injured in China; (*c*) if on trial for forging a note; (*d*) when attempting to make another keep a contract; (*e*) if condemned to be hanged for stealing something to eat; (*f*) if tried without a jury for treason; (*g*) if defrauded of a piece of land; (*h*) if denied the privilege of the writ of *habeas corpus* in time of peace.

CHAPTER XXI

THE FINANCIAL POWERS OF CONGRESS

Two kinds of financial powers.

267. Control over National Taxation and the Money System. — The financial powers conferred upon Congress by the Constitution are of two kinds. The first, which enables the national government to meet its expenses, gives Congress the right "to lay and collect taxes, duties, imposts, and excises," provided that "all duties, imposts, and excises shall be uniform throughout the United States," and "to borrow money on the credit of the United States." The second makes it possible for Congress to establish and maintain a uniform system of currency throughout the country. Not only does Congress have the right "to coin money, regulate the value thereof, and of foreign coin," and punish persons who attempt to counterfeit our coins, but the States are expressly forbidden to "coin money, emit bills of credit" or "make anything but gold and silver coin a tender in payment of debts."

Constitution, Art. I, § 8, cl. 1, 2.

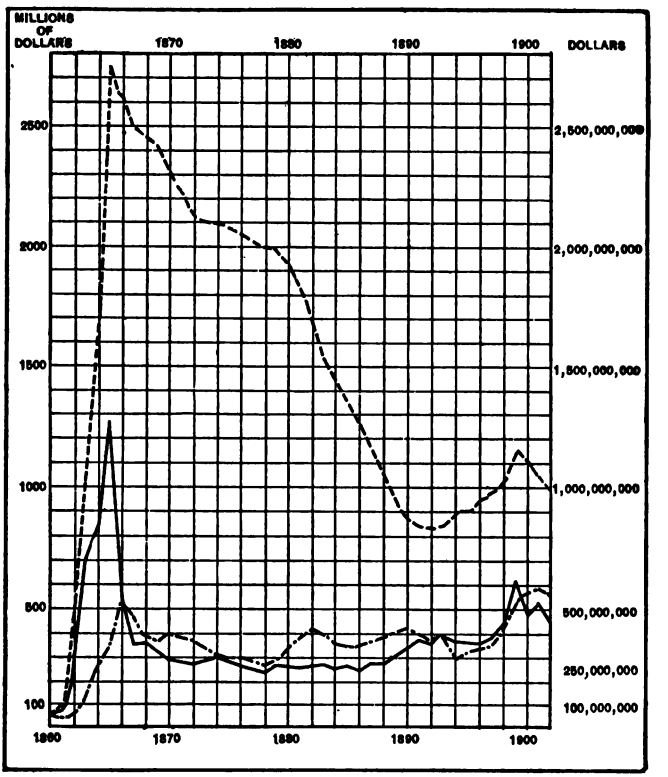
Constitution, Art. I, § 8, cl. 5, 6; § 10, cl. 1.

National Taxes

Financial needs of national government.

268. The National Tax System. — A casual examination of national expenditures shows us that in times of peace much more than one half of the money paid out by the United States government is for the army and navy, or for pensions and interest on the public debt. This proportion is, of course, greatly increased in time of war. It is therefore necessary that the national tax system be capable of con-

siderable expansion during crises, although part of the revenue required for war expenses must be obtained through loans.



NATIONAL REVENUE, EXPENDITURES AND DEBT (1860–1902)

Revenue —.—.—.— Expenditures ———— Debt — — — — —

History of national taxation.

The financial needs of the government have been met in different ways since the adoption of the Constitution. We may distinguish three periods in the history of national taxation. The first of these was brief, lasting from 1789 to 1802. Various forms of customs, duties, and internal reve-

nue were tried, in addition to direct taxes on land, houses, and slaves. The second period, from 1802 to 1861, was marked by an almost exclusive dependence upon duties, except during the second war with England. The third dates from 1862, when permanent internal revenue taxes were created, and temporary taxes upon incomes and manufacturing were used.

Expenditures.

The net expenditures of the government for the fiscal year ending June 30, 1902, were $471,190,858, of which all but $123,518,909, was for the army, navy, pensions, and public debt.

Revenue.

The revenue for the same year from customs was $254,444,709, and from internal revenue $271,880,122. For the period from 1789 to 1902, the receipts from customs amounted to $8,896,756,288, and from internal revenue to $6,326,830,844, in a total of $17,236,211,032.

Free and dutiable goods.

269. Duties on Imported Goods. — A little more than fifty per cent of the articles brought into the United States from other countries are dutiable. On many articles, imported even in large quantities, no duty is paid at the port of entry, these being placed upon the "free list." Most of the imports subject to duty are manufactured products that come into competition with the productions of our American factories. Upon these goods the rates vary widely, sometimes being as low as 25 per cent of what they cost abroad, as with common earthenware, and again, as with worsted yarns, being as high as 140 per cent of their original purchase price.

Merits and demerits of customs.

The chief advantage of custom duties[1] is that the tax is not felt by the person who eventually pays it, for the importer simply adds the amount of the tax to the cost of the goods, and the customer does not realize how much of a tax he has paid. Its chief disadvantage is that in times of prosperity, when national expenditures would naturally be light,

[1] On the value of a tariff to industry, see § 283.

the revenue from the tax is great, while in time of war, when expenditures are heavy, the imports of goods decrease visibly and the duties are correspondingly reduced.

The rates upon imported goods are either *ad valorem*, *i.e.* according to the value, or *specific*, dependent upon weight or bulk. Fierce controversies have been waged by the advocates of the two systems.

270. The Collection of Duties. — For the collection of duties there are one hundred and twenty-four ports of entry along the boundaries of the United States or the colonies, which are in charge of collectors of customs assisted by over five thousand persons. When an importer purchases goods abroad, he makes out three invoices, or bills of goods. One of these he ships with the goods, one is left at the consulate nearest the place of purchase, and the third is sent by the consul to the port at which the goods are to be entered. Incoming vessels are met by revenue officers, who take charge of the cargo. After the vessel has been "entered," the invoices of goods are compared with those sent from abroad, a part of the articles being examined by appraisers to ascertain whether they correspond in number and quality with those described in the invoices. The assessment is determined by the appraisers, and the collection of duties then performed by assistant collectors. In case of disputes between an importer and an appraiser, the difficulty is referred to a general board of three appraisers, whose decision is final. **Process at port of entry.**

The consuls ascertain so far as they are able whether the goods actually cost the amounts named in the invoices, but this is almost impossible. The government relies more upon secret service agents in Europe and at the chief ports to ferret out cases of extreme undervaluation of goods. Undervaluation is punished by the required payment of a double duty, and those who seek to evade the laws are likely to have their importations confiscated. Instances have occurred of connivance between importers and appraisers, resulting in enormous losses to the government, but these are fortunately quite rare. **Prevention of fraud.**

Travelers returning from abroad are allowed to bring back one hundred dollars' worth of clothing purchased in other countries, but must pay duty on everything else. The application of the custom laws to travelers leads to many annoyances and a large amount of petty smuggling. **Travelers.**

271. Internal Revenue. — To-day the national government obtains as much money from internal taxes as from those **Rates and history.**

upon commerce. The rates are quite high, and the articles taxed include spirits, fermented liquors, and the different forms of tobacco. Our present internal revenue system is an heritage left us by the Civil War, during which it was devised in the attempt to meet the extraordinary expenditures involved in maintaining a large navy, and an army of over a million men. The War of 1812 also produced internal taxes, but they were short-lived, owing to the feeling of the people against them.

Value of the tax during wars.

The ease with which the revenue from this tax can be increased is quite apparent in the financial history of the Civil and Spanish-American Wars. In both of these conflicts new schedules were created which provided for stamp taxes upon business operations such as the drawing of checks, the making of notes, and the transference of property, as well as upon the different processes in the manufacture of various articles.

Collection.

The collection of internal revenue is accomplished by collectors in the sixty-three districts into which the United States is divided. Every step in the operation of manufacturing the articles taxed is subjected to careful supervision and inspection. The tax is paid usually by the purchase and use of adhesive stamps. Secret service agents are kept busy preventing the manufacture of unstamped articles in unlicensed factories or distilleries. Frauds have been committed by the manufacture of stamps, but are more commonly practiced by moonshiners in remote districts or in the heart of great cities.

Direct taxes.

272. Miscellaneous National Taxes.—It was supposed when the Constitution was adopted that a large part of the revenue of the United States government would come from direct taxes levied upon the States in proportion to their population, but Congress had not seen fit to gain money by this means except five times, four of which were during the wars of 1812 and of 1861. Unlike the taxes upon imports or

manufactures, Congress does not decide what the rate shall be, but ascertains the total amount of the tax, apportioning to each State its share.

Inheritance tax.

A minor source of revenue now is the tax upon legacies. Persons who inherit at least ten thousand dollars are obliged to pay three fourths of one per cent of the amount if closely related to the deceased, or as high as fifteen per cent of the bequest, if not related in any way and the amount left is over one million dollars. This method of increasing the rate of a tax according to the amount upon which it is levied, is called progressive taxation, and is one of the means used nowadays to make those who are wealthy pay "their share" of the taxes, since a high rate is often less burdensome for them than a low rate for the laboring classes.

Income taxes (historical).

During the Civil War, taxes were also levied by the national government upon incomes. At one time persons with incomes between six hundred and five thousand dollars paid a five per cent tax, and those over five thousand dollars, ten per cent. In 1894 an attempt was made to levy a similar tax, exempting those whose incomes amounted to less than four thousand dollars annually, but the Supreme Court of the United States declared it unconstitutional, on the ground that it was a direct tax which must be levied upon the States in proportion to their population.

National Loans

Amount and rate of interest.

273. Borrowing Money by issuing Bonds. — At all times when government expenses are not met by the ordinary receipts — and these times always come in war and sometimes during peace — it is necessary for the government to borrow money. This is usually done by issuing bonds that bear a certain rate of interest and are payable in twenty or thirty years. These bonds are sold publicly to the highest bidders. At present the public debt of the United

States includes nearly a billion dollars' worth of such bonds of which nearly one half are at two per cent. As the three, four, and five per cent bonds are far above par, that is, sell for much more than their face value, we can easily perceive that the credit of our national government is very excellent; in fact, no government in the world is able to obtain a lower rate of interest or finds its bonds in greater demand.

Greenbacks.

274. Borrowing Money by issuing Treasury Notes. — If we take the pains to examine a five-dollar "greenback," we shall see that it is a promise on the part of the United States to pay the holder five dollars. It is in reality a note, issued by the Treasury Department instead of by an individual, but which circulates as money. When first issued, the United States nominally borrowed as much money as the face value of all the notes,[1] since the notes were made a legal tender for the payment of its debts, as well as those of individuals, and no one could refuse to accept them. By using them, the United States borrowed nearly four hundred and fifty million dollars during the War of Secession. It is still in debt to those persons who hold greenbacks, to the amount of over three hundred million dollars.

Continental currency.

The continental currency issued during the Revolutionary War was in the form of treasury notes. As the credit of the government was poor, they became almost valueless, so that the expression "not worth a continental," passed into a proverb. During the Civil War also the issues of treasury notes were so large that a greenback was worth much less than a gold coin of the same denomination, and at one time a dollar in gold would purchase as much as $2.85 in paper.

[1] The amount reckoned in gold was actually much less on account of the depreciation of the notes.

Our Money System

275. History of our Coinage System. — Fortunately for us Congress, even under the Confederation, adopted a decimal system of coinage, the Spanish dollar being the "monetary unit." In 1792, on the recommendation of Alexander Hamilton, Secretary of the Treasury, the weight of the silver dollar was fixed at 371¼ grains of pure silver and of the gold dollar at 24¾ grains of gold, with alloy added to make the coins hard and durable. Any one who had those amounts of gold or silver bullion, was allowed to take them to the mint and have them coined for his own use. Forty-two years later it was found necessary to reduce the weight of the gold dollar to 23.22 grains fine, as the old gold dollar was so heavy that people did all of their business with silver. Theoretically both dollars were of equal value, but the gold in the gold dollar had become worth more than the silver in the silver dollar for ordinary commercial transactions, so that the people used the "cheaper" dollar, just as they used paper money in revolutionary times when seventy-five cents in silver would purchase as much as a paper dollar. After this change had been made in 1834, however, people who had silver did not go to the mint with it, but took only gold, and silver almost disappeared from circulation. So in 1873, Congress decided that silver dollars should no longer be coined for those persons that brought to the mints 371¼ grains of silver for each dollar. Later, however, in 1878 and again in 1890, in response to a demand for silver dollars, Congress passed laws authorizing the Secretary of the Treasury to buy silver bullion, and have it coined into dollars. The later law was repealed in 1893, and in 1900 the gold dollar was made the money unit for the United States. Every silver dollar in circula-

Law of 1792.

Law of 1834.

Law of 1873.

Law of 1900.

tion, the silver of which is actually worth about a third of the gold in a gold dollar, is guaranteed to be of equal value with gold.

Preparation of coin disks.

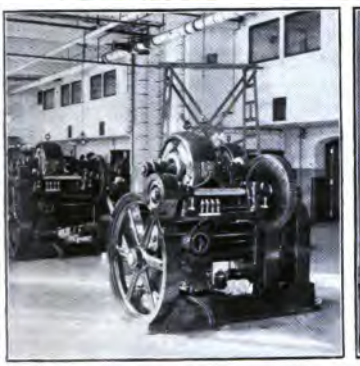
276. The Process of making Coins. — The different coins in use in the United States are coined at the mints operated by the government at Philadelphia, San Francisco, and Denver.[1] The gold and silver is first refined so as to be absolutely pure and is then mixed with exactly ten per cent of copper alloy for silver coins, and copper and silver alloy for gold coins. This mixture is moulded into bars about a foot long, which are rolled repeatedly until they become strips of several feet in length and of the required thickness for the various coins. These strips are fed into a cutting machine which cuts out the disks or planchets of suitable sizes for the different coins. The planchets are first placed in the milling machine in order to raise the edges to prevent wear upon the face of the completed coin and are then taken to the coining machine in which dies from above and below are pressed against the planchets simultaneously. In the counting room, the more valuable coins are counted by weight, and the minor coins are counted by filling the grooves of boards which will contain a certain number and no more (see apparatus at left of view opposite). The greatest care is taken to see that every important coin weighs exactly what it should, and the planchets are tested for that purpose. Those are discarded and remelted which are under weight and the heavy coins are filed until the weight is correct. All of the minor coins are made at the Philadelphia mint from materials furnished by a private company.

Milling, stamping, and counting coins.

Character.

277. National Bank Notes. — Besides the gold coins which any one can have struck for him at the mints by taking the proper amount of gold bullion, and the silver coins made by the government from silver which it has bought outright, we use in business several kinds of paper money. One of them consists of the bank notes issued by banks which receive their charters from the national government. These banks are allowed to issue notes equal in value to United States bonds which they have bought and left with the Treasurer of the United States. As the government agrees to accept

[1] The mint at Denver is now (1903) in process of construction.



WHERE COINS ARE MADE.

The Mint, Philadelphia, Pa.

A Milling Machine. A Coining Machine.

The Counting Room.

the notes except in the payment of duties, for which gold alone is taken, and as the banks must redeem them in lawful money upon demand, they circulate readily although they are not legal tender, and people are not obliged to accept them in the payment of individual debts.

Creation of the national banking system.

Our present national banking system was established in 1863 for the purpose of creating a new market for bonds which the government was obliged to sell. The national bank notes soon replaced the notes of state banks which were then in circulation, for Congress placed an annual tax of ten per cent upon the issues of the state banks.

The national bank notes are printed by the government at the bureau of engraving and printing, the notes being distributed to the banks for the signature of bank officials.

Gold and silver certificates.

278. The Other Paper Money in Circulation includes the greenbacks, of which mention was made in section 274, and what are known as gold and silver certificates. As it is much easier to handle a five-dollar bill than five silver dollars, it has become customary for the government to deposit the silver dollars in government vaults and issue in place of them silver certificates of one, two, five, and ten dollars. These are not legal tender, but the government is willing to exchange the silver for them at any time, and to give gold in exchange for the silver, so that a silver certificate for five dollars is worth as much as a five-dollar gold piece. Gold certificates are likewise issued in denominations from $20 to $10,000; but, as we should naturally expect, the amount of gold in circulation is three times as great as that of the gold certificates, whereas five sixths of all the silver in the United States is piled away in sacks in Washington or at the subtreasuries.

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Practical Questions

1. What is meant by legal tender? What kinds of money are legal tender and to what amounts?

2. Name the articles from which most of our customs duties are now derived. Newspaper almanacs.

3. Have we a national tax now upon any commercial transactions? To what taxes is the progressive principle applied?

4. What kinds of money are in circulation? Which one represents the greatest value? What proportion of the money in the country is in the Treasury?

CHAPTER XXII

THE COMMERCIAL POWERS OF CONGRESS

Need of national control (1787).

279. Commerce under the Confederation. — Aside from the inability of the Confederation to obtain revenue, the principal cause of its failure was its lack of power to regulate commerce between the States and with foreign countries. Indeed the pressing need of national control of commerce was what led to the calling of the constitutional convention of 1787 (§ 221), for the annoying laws made by the States regarding interstate commerce had caused much bitterness in some sections, and the varying state tariffs made it impossible to trade with Europe to advantage. All of this was changed when the Constitution gave Congress the right "to regulate commerce with foreign nations, and among the several States."

Constitution, Art. I, § 8, cl. 3.

Regulations for Foreign Commerce

Aim of commercial laws.

280. General Means of Regulation. — Regulations for foreign commerce may be said to be of two kinds, those that aim to develop commerce in general, and those that seek to restrict certain lines of trade. Every nation wishes to do as much business as possible with other countries, provided it has the best of the bargain. This is thought to be the case if it sells abroad more than it buys, and consequently many governments make a special effort to increase their exports, while almost all have tariffs which limit the im-

portation of foreign productions by rates that are often quite high. According to the Constitution of the United States, neither Congress nor the States may lay any duty upon exports, but Congress may tax imports if the rates are uniform throughout the United States and no preference is given to one part above another.

Constitution, Art. I, § 9, cl. 5, § 8, cl. 1.

281. The Promotion of our Foreign Commerce is accomplished chiefly through such indirect means as commercial treaties and harbor improvements. A nation cannot trade to advantage with other nations unless it first arranges with their governments for its international commerce. During the years following the Revolutionary War, we had treaties with France, Prussia, and Holland only, so were commercially at a disadvantage. Gradually we were able to make better arrangements for our foreign trade, and in 1854 we achieved a signal triumph in opening some of the ports of Japan through a treaty negotiated by Commodore Perry. We are now able to dictate the terms upon which we shall do most of our business beyond our own shores, so that we are not so likely to think of an ordinary commercial treaty as a means of promoting commerce. More time is now devoted to gaining special advantages through "reciprocity" treaties. If a nation will agree to lower its tariff rates upon certain articles that we send to them, we make a similar reduction in rates upon specified goods imported from them, and in this way, the amount of the commerce between the two countries is distinctly increased.

Commercial treaties.

Reciprocity treaties.

Every year vast sums are spent in improving harbors, deepening channels, building breakwaters, maintaining lighthouses, patrolling the coasts, and using other means to give good harbor facilities and make navigation profitable as well as safe. Rivers that flow between States or in more than one State have been made fit for commercial purposes at

Harbor improvements and coast protection.

vast expense. One of the most satisfactory of these improvements is at the mouth of the Mississippi river, where, by the simple device of narrowing the channel, the mud brought down by the river is carried far enough out to sea to prevent its obstructing the existing channel.

Subsidies.

Many governments grant subsidies or bounties to exporters for some kinds of agricultural or manufactured products shipped abroad. For example, Germany gives a bounty of $\frac{1}{4}$ of a cent per pound upon all beet sugar exported. The United States has never used this artificial means of stimulating trade.

Navigation acts.

At the beginning of our history under the Constitution, Congress passed several navigation acts. These were intended to aid shipbuilders and commerce. They provided that no American could purchase ships abroad, neither could any American ship be owned in part by a foreigner. Foreign vessels were not allowed to compete in the coasting trade. They have recently been modified so that Americans may purchase ships abroad. Bills have also been proposed for subsidizing American ships, but the only ship subsidies ever granted by the United States were to two lines many years ago, and they were temporary.

Purpose.

282. The Interoceanic Canal at the southern extremity of North America is the greatest of the undertakings of the United States government for the purpose of developing commerce. Proposed many years ago, and earnestly advocated after we obtained a real foothold on the Pacific coast just before 1850, the prosecution of any work was blocked by the Clayton-Bulwer treaty, which made it necessary for the United States to admit Great Britain as a partner in building and controlling the canal. This treaty was finally annulled in 1902 through the acceptance by both governments of the Hay-Pauncefote Convention, which permits the United States to construct the canal alone and to control it in time of war.

Efforts to obtain.

Isthmian Canal Act.

A little later, by the act of June 28, 1902, Congress authorized President Roosevelt to secure from the Republic of

Colombia the permanent use of a right of way across the Isthmus of Panama. Appropriations were made for purchasing the rights and property of the French Canal Company, and the Secretary of the Treasury was given authority to issue two-per-cent bonds in order to complete the canal. A commission of seven members, appointed by the President with the consent of the Senate, was created to supervise the actual construction. By a treaty signed in January, 1903, arrangements were made with Colombia regarding the right of way; but if, for any reason, the Panama route proves unsuitable, the Isthmian Canal Act provides that the Nicaragua route shall be selected instead.

Effect on commerce and industry.

283. The Results of Tariff Restrictions. — The right to impose duties upon imports was conferred upon Congress for the purpose of obtaining revenue, but, especially since the War of Secession, it has been used quite as much to benefit industry within the United States as to gain money for carrying on the government's work. In other words, our tariff now is and for a long time has been distinctively "protective." The custom rates are high upon imported goods which will be sold in this country in competition with American products, while such articles as tea and coffee, which are not raised in the United States, come in duty free. The effect of this "protection" has been to stimulate manufacturing to such a wonderful degree that in 1900 the value of our manufactured products was seven times as great as in 1860, although our population had but little more than doubled during the same period. The restraint exercised by the tariff upon foreign commerce is seen when we compare our imports with our exports, the former having been but sixty-five per cent of the latter during the year ending June 30, 1902, leaving a "balance of trade" in our favor of $478,398,450.

Tariff for revenue only.

The policy of a protective tariff has been opposed by a great many Americans who believe that our prosperity would have been even greater than it has been if we had made use of a "tariff for revenue only," which would allow much keener competition with foreign manufacturers.

Dingley Tariff.

Under the present tariff, called the Dingley Tariff of 1897, it is possible for the government to make reciprocity treaties, and, if any country pays a bounty upon articles which we import, to increase the legal duty by an amount equal to the bounty. These additional duties have been seldom used, whereas a great number of reciprocity treaties have been negotiated by the Department of State, some of which have been accepted by the Senate.

Interstate Commerce

Commerce by water.

284. National Aid to Internal Commerce. — Congress has aided in the development of means of communication between the States, by improving interstate rivers and by giving help to new railways. Appropriations are made annually for the deepening of river channels. The value to interstate commerce of this form of government activity can be readily appreciated by considering the increase in the trade of the upper Great Lakes made possible by the magnificent ship canal at Sault Ste. Marie.

Means of land communication.

As the country has become more fully settled, government aid to railways has been discontinued. In the two decades following 1850, however, the national government granted to railways, most of which were in the West, an area equal to that of the two Dakotas and Nebraska. Immense sums were also loaned by Congress during this period to the promoters of transcontinental railways.

285. Creation of the Interstate Commerce Commission. — For nearly one hundred years Congress did not attempt to

exercise its right to control interstate commerce except by the passage of a very few minor laws. But with the development of trunk railways which did business in several States, regulation at length became unavoidable. Several of the States had created railway commissions (§ 187) to take charge of railway affairs within their own States. One of these commissions, that of Illinois, applied its laws to certain trade that was carried on between Illinois and the neighboring States, but the Supreme Court of the United States declared in 1886 that the Illinois commission had no right to regulate interstate commerce, as Congress alone had that power. The next year Congress passed the Interstate Commerce Act to protect the public from the unjust actions of the railways.

Need of national control for railways.

Some regulations for these trunk lines were absolutely essential, because several of the railways had formed "pools," by which they agreed to divide up the business or the profits within a certain territory, each retaining a prescribed share, and all being able to charge higher rates because of the agreement. Railways running between two large cities would charge more from one terminus to some intermediate point which had only one railway, than they did to the other terminus, where the competition was keen.

Pools and discriminating rates.

286. The Interstate Commerce Commission created by this act consists of five members appointed by the President. It may hold sessions or call witnesses, and has the power to declare rates unjust and to enforce its decisions through the courts. The avowed purposes of the act are to prevent pools affecting interstate commerce, these being declared illegal, and to prevent rates which are discriminating because one person is charged more than another for similar services, or because a greater charge is made for a short haul than for a long one. The Commission has done what it could to accomplish this task, but has found it impossible with the powers intrusted to it. Yet it has succeeded in

Composition, powers, and influence.

giving publicity to violations of the law and has in this way often secured more reasonable charges.

Anti-trust law of 1890.

287. Anti-trust Legislation. — Combinations for the restraint of interstate trade are declared illegal by the Anti-trust law of 1890. By means of this law, the United States government has broken up several combinations of railways which have sought to fix prices and to prevent competition among themselves, and has put an end to the disorder accompanying railway strikes. In order to make this act more effective another was passed in 1903, providing for the immediate trial of cases involving the law in the Circuit Courts, with a direct appeal to the Supreme Court.

Commissioner of Corporations.

Many anti-trust bills have been proposed in Congress. Two among these were enacted into law by the Fifty-seventh Congress (1903). One gives the Commissioner of Corporations in the Department of Commerce power to investigate the "organization, conduct, and management" of any corporation doing interstate business which is not subject to the Interstate Committee Commission, and declares that "the information so obtained, or as much thereof as the President may direct, shall be made public." The second, known as the "Elkins Anti-rebate bill," makes it illegal to give or accept any rebate of transportation charges.

Elkins Anti-rebate bill.

Proposed control of interstate trusts.

A great many people believe that the national government ought to control the great corporations that do business in different States, but the Constitution does not directly confer upon Congress the power to control industry, and the national courts have from the beginning held that the Anti-trust law of 1890 applied solely and exclusively to interstate commerce and not to the manufacture of goods afterward sold in other States.[1] This has made it necessary for the state governments to adopt laws for the control of trusts. As these laws vary from State to State with rather disastrous results, national control for interstate

[1] On Feb. 23, 1903, however, the Supreme Court decided that Congress had power to prohibit the carrying of lottery tickets from one State to another.

industry as well as interstate commerce has seemed advisable. Numerous suggestions have been made for more radical anti-trust laws, after amendment to the Constitution if necessary, giving Congress control of all interstate "trusts."

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5. The Sault Ste. Marie ship canal. W. P. Kibbie, *Engineering Magazine*, XII (1897), pp. 800–810.

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7. What constitutional right has the United States to fix rates for interstate commerce? to improve New York harbor? to build an isthmian canal?

Practical Questions

1. What practical difficulty is encountered in concluding reciprocity treaties? With what important nations have we reciprocity treaties at present?

2. How much was spent last year for the improvement of rivers and harbors? Were any of the improvements of direct benefit to the section in which we live?

CHAPTER XXIII

THE TERRITORIAL POWERS OF CONGRESS

288. The Territorial Powers granted or Permitted. — When the Constitution was adopted, Congress was given the "power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," together with the right to admit new States into the Union. Nothing was said in the Constitution about the right of acquiring new territory, but there has never been a time when the national government, or any considerable proportion of the people, has opposed the annexation of territories, either by treaty or by joint resolution of the houses of Congress. We may, therefore, distinguish four different territorial powers of Congress: (1) the right to acquire territory;[1] (2) the right to govern it; (3) the right to admit territories as States; and (4) the right to sell or otherwise dispose of any lands the title to which is vested in the United States. For the sake of convenience, these powers will be considered under the three heads given below.

General.

Constitution, Art. IV, § 3, cl. 1, 2.

Four classes of powers.

Acquisition and Temporary Government

289. The Expansion of National Territory. — The first territory subject to the control of Congress comprised the public lands west of the Alleghany Mountains, to which the

Territorial growth (1781–1899).

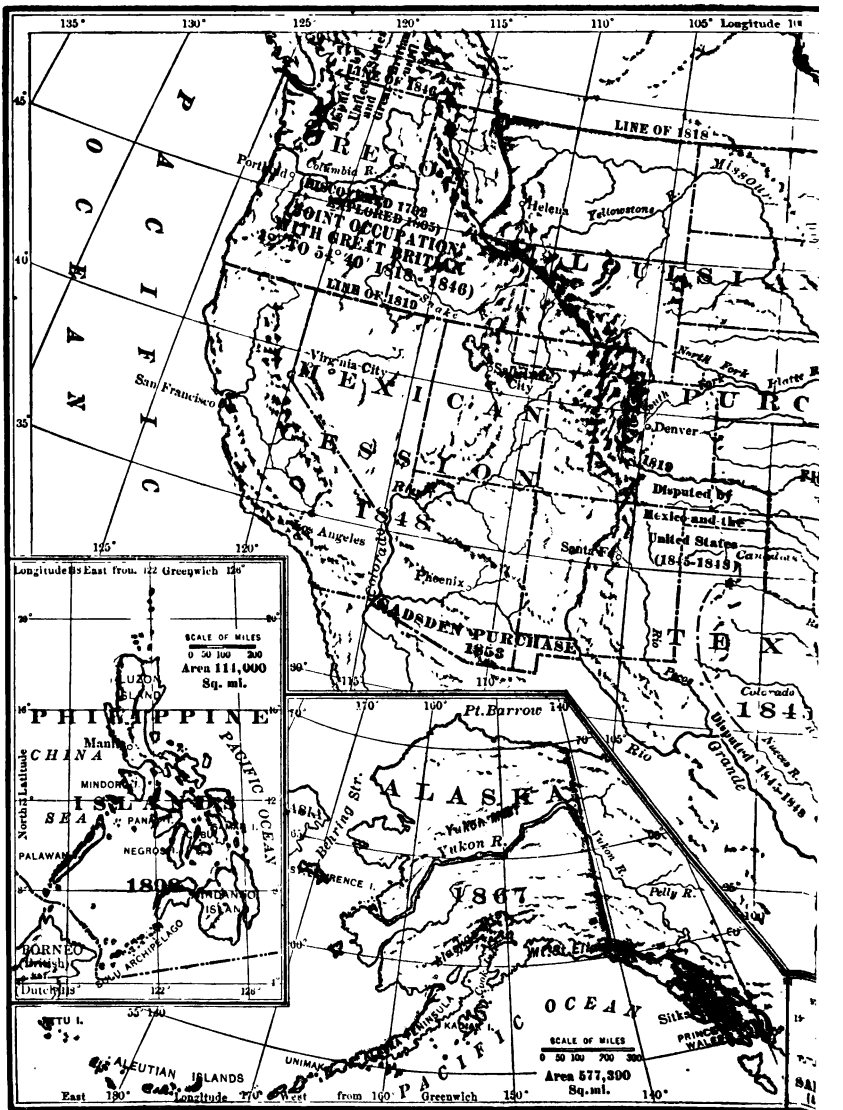
[1] We should notice that the right to acquire territory is one that can be exercised either by Congress, or by the President and Senate acting together.

separate States surrendered their respective claims between 1781 and 1802. In 1803, Louisiana was added to this domain, being purchased from France for fifteen million dollars. It consisted of nearly a million square miles covering the western half of the Mississippi Basin, the southwestern boundary being in dispute until definitely located in the Spanish treaty of 1819, which provided also for the purchase of Florida. In 1845, we annexed the independent State of Texas by joint resolution of the houses of Congress, but only that portion of the territory claimed by Texas and transferred by that State to the United States government in the Compromise of 1850, has ever been subject to national control. By treaty with Great Britain in 1846, the forty-ninth parallel of latitude was made the northern boundary of our part of the Oregon country, which had been occupied jointly by Great Britain and the United States since 1818. At the close of the Mexican War, in 1848, the very extensive territory south of parallel 42 as far as the Gila river, and west from the Rio Grande to the Pacific Ocean, was annexed by treaty, and was still further enlarged by the Gadsden Purchase of 1853. In 1867, Russia sold us Alaska, and in 1898, by the treaty of peace with Spain, we came into possession of Porto Rico, the Philippines, and other numerous smaller islands. Hawaii had been annexed during the Spanish-American War (1898) by a joint resolution of Congress.

Western land claims.

Five States claimed Western lands in 1781 by virtue of their colonial "sea to sea" charters, and New York based her claim on treaties with the Indians. The claims were surrendered as follows: New York, 1781; Virginia, 1784; Massachusetts, 1785; Connecticut, 1786; South Carolina, 1787; North Carolina, 1790; and finally Georgia, in 1802.

290. Temporary Government of the Public Domain. — During the period that has followed the acquisition of terri-



(The different Scales used should l.

ɔe noted with particular care.)

tories, before they have been admitted into the Union as States, they have passed through two stages of territorial development. (1) As their population at first was either scattered, or unable to undertake the duties of self-government for other reasons, a provisional government was provided in which the people took no part. (2) When conditions permitted, each territory was "organized" upon a more permanent basis and governed as described later in this chapter.

Two periods of national government.

The temporary territorial governments, which might properly be called colonial, have been left by Congress in charge of military or administrative officials selected by the President, or by Congress. The territory northwest of the Ohio river, for which the famous Ordinance of 1787 was adopted, was governed at first as one district by a governor and judges, who were appointed by Congress and given power to make and execute laws suitable for the district. Most of the Louisiana Purchase was subject for over a decade to a provisional government. Alaska is still a colony of the United States, governed by law of Congress which is executed by a governor and assistants whom the President selects; and the Philippine Islands were for three years under a military governor, or a commission which had full legislative and executive powers.

Historical forms of temporary government.

Indian Territory has always been governed by the "five civilized tribes" to which it was originally assigned. Since the passage of the Curtis Act in 1898, four United States districts courts have been established, and before 1906, all lands are to be distributed to the Indians "in severalty." By that year all government by the tribes will have ceased, and the territory will be governed directly by the United States.

Indian Territory.

291. Congressional Control of National Territory. — After the settlement of the slavery question, the power of Congress to govern this public domain in such a way as it saw

What are the constitutional limits?

fit was not questioned until a few years ago.[1] This was due in part to the fact that most of the territory belonging to the United States was near the States, and was accordingly governed with an idea of preparing the territories for Statehood. With the acquisition of lands more or less distant, the question at once arose regarding the exact limits of the territorial powers of Congress. Were these colonies part of the United States, or did they simply belong to the United States? Did the special limitations placed upon Congress in the Constitution apply to this territory, as *e.g.* the one that duties should be uniform throughout the United States, or might Congress pass a tariff act for any colony different from that applying to the United States proper? Was Congress under obligation to permit right of trial by jury and perfect freedom of speech, under any and all circumstances?

The "Insular cases."

Some of these questions have not yet been judicially determined, but in the "Insular cases" the Supreme Court rendered its decisions (May 27, 1901, and December 2, 1901) on the question of tariffs. It held that although the colonies were not foreign soil, neither were they integral parts of the "United States" and were, therefore, subject to special tariffs that Congress might enact. Opinions given in connection with the decisions indorsed the view that the Constitution does not apply to these colonies until Congress shall so arrange, and that they may, therefore, be temporarily governed in such a way as Congress considers for their best interests.

292. Present Government of the Insular Possessions. — By the act of July 1, 1902, the government of the Philippines has

[1] Before the War, the South held that Congress could not prohibit slavery in the territories. This view was accepted by the Supreme Court in the Dred Scott Decision (1857).

been placed on a fairly permanent basis. Provision is made for the taking of a census as soon as conditions permit. Within two years thereafter a popular assembly of not less than fifty nor more than one hundred is to be chosen by men who own property or who can speak Spanish or English. The upper house of the legislature is chosen by the governor and the commission of four members, which aids him in the administration of all Philippine affairs. A bill of rights similar to that in the United States Constitution is included in the Government Act, and the islands are to be represented by two commissioners to the United States, chosen by those qualified to vote. **The Philippines.**

The temporary government arranged for Porto Rico by the law of April 4, 1900, provides for a lower house of the legislature elected by all citizens of Porto Rico. The upper house is composed of five Porto Ricans and six administrative officials appointed by the President. These six form also an executive council of the governor, who is chosen by the President and Senate. The governor has about the same powers as governors in organized territories, but appoints a larger number of local officials. The judges of the highest courts hold office directly from the President. Two commissioners are chosen to represent the territory at Washington. **Porto Rico.**

The government of Hawaii approaches the "organized" type very closely, and is more permanent than those now in force in the Philippines and Porto Rico. Suffrage is practically universal, and the voters elect a legislature of fifteen and thirty members respectively for the two houses. The governor, the secretary, and the judges are the only territorial officials selected by the President. **Hawaii.**

293. The District of Columbia. — The Constitution declares that Congress shall have power "to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States." A law passed in 1790, arranged for the location of the district upon the banks of the Potomac, the land being ceded to the United States by Maryland and Virginia, although the part upon the south bank was receded to Virginia in 1846. The district is now governed by three commissioners appointed by Congress, with power to select minor officials and to supervise the

History and present government.

Constitution, Art. I, § 8, cl. 17.

administration of all local affairs. Two afternoons a month are devoted in Congress to bills relating to the government of the district.

Question of its location (1790).

The selection of the location for the national capital aroused a great deal of interest and feeling, as each section was anxious to have the seat of government situated within its borders. Preference was finally given the South in order to gain Southern votes for "State assumption," a measure which Secretary of the Treasury Hamilton considered invaluable in establishing the public credit.

Organized Territories

Degree of national control.

294. The Relation of an Organized Territory to the National Government. — In one sense, every organized territory is entirely under the control of Congress, for that body decides the extent of its boundaries, the form of its government, the part which the people may play in that government, and what laws passed by the territorial legislature shall remain in force. In other words, the territory depends upon Congress for its very existence, and derives its fundamental law from Congress. But by custom, a territory has always been treated as a rudimentary State, subject to national supervision, although given the right to direct its own affairs as far as possible, in order that when it becomes a member of the Union, the habit of self-government shall have become fixed.

Territorial delegates.

The territories do not have representatives in Congress, but each has been allowed to elect a delegate who has a seat in the House of Representatives, and who may speak upon all matters affecting his territory, although he may not vote.

The legislature.

295. The Government of an Organized Territory. — Organized territories have always been governed in much the same way. The legislatures are bodies of two houses, chosen by the voters upon whom the privilege has been con-

ferred by territorial law. Sessions of sixty days are held biennially, and laws made on all subjects not forbidden by Congress, but when a law has been passed, it may be vetoed by the governor or rejected by Congress.

Governor and secretary.

The principal executive officials are the governor and the secretary, each of whom is selected by the President with the consent of the Senate for a term of four years. The governor is both the chief representative of the United States in the territory, and the chief executive of national and territorial law. In addition to the usual message to the legislature, he makes a yearly report to the President, selects many of the minor officials, exercises the right to pardon offenders, commands the militia, and has the right to veto bills. The secretary is the principal clerical officer of the territory.

Territorial courts.

The highest territorial court consists of three judges appointed by the President and Senate. All cases arising under territorial law, and many under the Constitution and statutes of the United States, are decided finally by these courts. All local executive and judicial officials are chosen by the legal voters of the territory.

Two methods of admission.

296. The Admission of New States. — No organized territory believes its territorial government to be other than provisional, considering it the chrysalis form of its existence. Its dream is to enjoy full Statehood, and it uses every possible means to obtain from Congress the right to join the sisterhood of States. Sometimes it calls a constitutional convention that frames a constitution, which, after ratification by the voters, is sent to Congress for its approval. In this the State usually renounces all claim to the title of the public lands, and agrees that certain articles, as *e.g.* those relating to public education and religious liberty, shall be revocable only with the consent of both the United States

and the State. If no constitution has been adopted, Congress passes an enabling act, which authorizes the framing of a Constitution. After this has been accepted by the people and Congress, the territory is admitted as a State.

Constitutional limitations on admission. Constitution, Art. IV, § 3, cl. 1.

According to the Constitution of the United States, "No new State shall be formed or erected within the jurisdiction of any other State, nor [may] any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress."

The Public Lands

Title to public lands.

297. Disposition of the Public Lands. — When the United States came into possession of the territories mentioned in § 289, it acquired not only the right to govern these regions, but the title to unoccupied lands within their borders. As we just noticed, the title to these public lands did not pass to the States upon their admission to the Union, but remained with the national government.

Grants for public improvements and

This public domain was intended at first to be a profitable investment, but has been used much more for the purpose of developing the newer sections of the country.[1] After completing the surveys described in § 299, the lands have been granted to States and to individuals, or sold at a nominal figure. An area greater than that of the thirteen original States has been transferred to railways or to States for internal improvements. Two sections of public school lands in each township[2] have been given to the various States upon their admission to the Union, and during the

Schools.

[1] In one year (1836) the income from public lands exceeded that from customs duties, but the total revenue received by the national government is less than the total cost of administration.

[2] Before 1848 one section only.

sixties general grants of the lands were made for the aid of state agricultural schools. Parts of sections have also been assigned to soldiers and sailors for military service, and large quantities have been sold at $1.25 or $2.50 an acre.

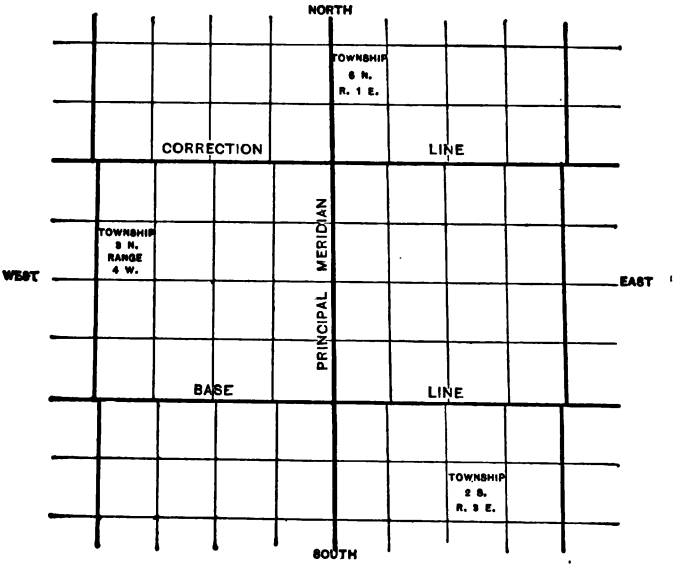
298. Land Laws and Regulations of the Present. — Most of the West has been settled under the homestead laws. The present law, originally enacted in 1862, enables any citizen, or person who intends to become a citizen, to acquire title to a quarter section, 160 acres, by living on it for five years. Veterans are allowed to deduct the time of actual military service. Timber lands and mineral lands may also be acquired upon very favorable terms. **Homestead laws.**

The Irrigation Act of June 17, 1902, provides that the Secretary of the Interior may use the proceeds from the sale of public lands in the Pacific and Rocky Mountain States, for the construction of storage reservoirs upon lands wholly or principally under his control. As most of the unsold public lands are not capable of cultivation under present conditions, being either mountainous or arid, large areas will be reclaimed and made productive by this wise policy. **National Irrigation Act.**

Some of the most picturesque and valuable mountain districts have been set aside as national parks, the most important being the Yellowstone Park, of 3312 square miles, and the Yosemite, almost as large. About 60,000,000 acres within the limits of the United States proper have been placed in the forest reserve. **National parks and forest reserves.**

299. The Method of surveying the Public Domain. — On May 25, 1785, Congress adopted the ordinance according to which the surveys of the public lands have been made. This provided for the selection of certain parallels of latitude to be called *base lines* and certain meridians of longitude called *principal meridians*, the intersection of a base line with a principal meridian being the starting point for surveying all of the lands in that part of the country. Townships six **The general process.**

miles square are then surveyed to the north, east, and west, and possibly to the south, being named according to the distance from the base line and the meridian; the distance to the east or west being indicated



METHOD OF MAKING SURVEYS.

by the number of the *range*, and the distance to the north or south by the number of the *township*, as shown in the diagram given above. However, as meridians of longitude converge to the north, the townships which were not near the base line were, therefore, less than six miles across from east to west. To avoid this difficulty, parallels of latitude called *correction lines* are arranged every twenty-four or thirty miles and a fresh start is made so as to keep the townships as nearly six miles square as possible.

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	160 ACRES 40 80	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

SECTIONS OF A TOWNSHIP.

Each township is subdivided into thirty-six sections each one mile square and numbered as shown in the accompanying diagram. The sixteenth and thirty-sixth sections are the ones given

to the States for the benefit of the public schools. Each section is further subdivided into halves, quarters, and possibly eighths.

Townships and sections.

300. National Property. — The Constitution gives Congress the right to exercise exclusive legislation "over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings." Scattered all over the country there are national buildings necessary to carry on its military or administrative work, and the land upon which these are located or adjacent to them must of necessity be controlled by the United States. It is exempt also from state and local taxation.

Public buildings.

Constitution, Art. I, § 8, cl. 17.

The erection of all public buildings not connected with the military or naval service is under the charge of the Supervising Architect, an official of the Treasury Department. All contracts for arsenals, forts, breakwaters, and other harbor defenses and improvements are made by the Secretary of War.

Construction of national improvements.

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3. Local self-government in American and in European colonies. J. W. Jenks, in *Review of Reviews*, XXVI (1902), pp. 580–588.

4. Conditions in Indian Territory. R. J. Hinton, in *Review of Reviews*, XXIII (1901), pp. 451–458.

5. A hundred years of the District of Columbia. A. Shaw, in *Review of Reviews*, XXII (1900), pp. 675–686.

Practical Questions

1. What territory has been annexed by joint resolutions of Congress? How does it compare in area with that acquired by treaty? What States, besides the original thirteen, have never been national territories?

2. What territories may be considered organized at the present time? Make a table showing the form of the legislature, the executive officials, and the local governments (with the method of selection in each case), for Arizona, Hawaii, Porto Rico, and the Philippines.

3. When was this State admitted to the Union? Were any limitations placed upon it at that time? What is the value of the school lands or the amount of the fund created by the sale of the lands? Does the United States still hold the title to public lands in this State? Name any public buildings, forts, or reservations in this vicinity belonging to the national government.

4. Where is the nearest base line? the nearest principal meridian? In what range and township do we live?

CHAPTER XXIV

MISCELLANEOUS POWERS OF CONGRESS

Military Powers

301. The Right to declare War. — The chief military powers of Congress consist in the right to declare war, to raise an army and create a navy, and to maintain the militia. War is not ordinarily carried on between civilized nations without a formal declaration from one or the other that "a state of war exists" between them. Our greatest wars, those of the Revolution and of Secession, have not required such a statement because at the opening of each conflict one of the parties to the struggle had no international standing. In the minor conflicts, the declaration of war has always been made by the United States.

Powers and methods.

Constitution, Art. I, § 8, cls. 10–16.

302. The American Army. — As we have not been surrounded by powerful nations, it has not been found necessary to maintain a vast military establishment such as exists in every European country. Furthermore, public sentiment has compelled Congress to make our army as small as possible, since we have to-day the same dread of military despotism that made our forefathers insert in the Constitution the clause which denied to Congress the power to vote money for an army for a longer period than two years. This feeling showed itself in the law which was in force until 1898, that the regular army should not contain more than 27,000 enlisted men. In order to preserve order in our new colonies an additional force was permitted by

Popular feeling.

the temporary law of Feb. 2, 1901, which placed the maximum at 100,000 enlisted men, and the minimum at 57,000.

Organization and management of the army.

303. Military Administration and Training. — The present arrangement of the cavalry and infantry provides that every regiment shall contain three squadrons or battalions, each of which comprises four troops or companies. General oversight of the organization, equipment, and management of these forces is given to the General Staff composed of the heads of the different bureaus of the War Department (§ 402). This Staff aids the President as commander-in-chief in the practical control of all military affairs, the chief of staff, occupying much the same position as the former lieutenant-general of the army.

Military schools.

The need of technical training of officers led to the establishment, in 1802, of the West Point Military Academy. Each congressional district or territory is permitted to send one cadet, these being named by the representatives when a vacancy occurs, two are appointed by the senators from every State, and forty are selected by the President from the country at large. After a four years' course, graduates of the academy are granted commissions as second lieutenants in the regular army. Non-commissioned officers are also given instruction in schools established at the army posts, or in special schools at Fort Leavenworth and Fort Riley; still more advanced training being given at the War College at Washington.

The total strength of the army at the close of 1902 was 3820 officers and 59,866 enlisted men.

Rules for organization and in service.

304. The Militia. — This branch of the military service has always been considered a most valuable one, as it theoretically includes all able-bodied men between the ages of eighteen and forty-five, a total of over ten million. Only one per cent of these, however, are regularly enrolled and under discipline. They may be called upon by the President to suppress insurrections and repel invasions, being subject to the same rules as the regular soldiers, except that they may be kept in service only nine months in the year and may not be called upon to do duty outside of the United States.

The general rules for the militia are passed by Congress, and provide for the method of organization, number of officers, method of

election and other details. Each State takes charge of all subjects not covered by national law.

During the Civil War, President Lincoln called upon the States to furnish militiamen three times, asking for four hundred seventy-five thousand men in all.

Character and value.

305. The Navy. — Because of our geographical situation, a much greater dependence is naturally placed upon a navy than upon an army. The new American navy is only twenty years old, but compares quite favorably with those of Europe, on account of the superiority of the American seaman and gunner, rather than the number of vessels, since the navies of Great Britain, France, Russia, and Germany are larger than ours. For the defense of our new colonies, and the protection of American shipping interests everywhere,[1] an efficient navy is necessary, and a wise policy seems to dictate that a very strong navy will be a valuable means of preserving future peace.

Administration.

306. Naval Regulations and Administration. — The vessels of the navy are assigned to different squadrons under the personal charge of vice-admirals. The general direction of all naval affairs, plans for the coöperation of the different squadrons and the suggestion of improvements in naval administration are given to the Secretary of the Navy aided by the Admiral and a General Board.

Naval stations and yards

To facilitate the movements of the vessels of the navy, naval stations have been established at various places with intermediate coaling stations. A hundred million dollars have been spent for the construction of docks and navy yards, the latter being now equipped for building war vessels, including battleships. At these yards and at those owned by private parties there are now under construction vessels whose aggregate tonnage is nearly fifty per cent greater than that of the entire navy at present, the number of new war ships being much greater than those authorized by any other nation except Great Britain.

[1] The construction of an interoceanic canal (§ 282) has been undertaken almost as much in the interest of naval protection as for the sake of commerce. The long trip of the *Oregon* in 1898 around Cape Horn did much to crystallize sentiment in favor of a canal, whose usefulness at that time would have been very great.

Naval academy.

In 1845 a naval academy was founded at Annapolis, Maryland, for the training of officers. As with the military cadets, the midshipmen are appointed by the representatives, senators, or the President, the latter being allowed to name fifteen from the country at large. The course includes four years at the academy and two years of active service at sea. Training ships are also maintained at various places, and a Naval War College gives instruction at Washington.

Land and water protection.

307. Coast Defense. — In theory at least our preparation for war has been undertaken with a view to avoiding future conflicts. This has made it especially necessary to defend our coasts, and at all important seaports, some forms of coast defense are provided. The most important of these are the coast defense vessels, usually heavily armored monitors or floating batteries, and the land batteries, composed of large mortars and very powerful guns, often mounted on disappearing carriages. The channels are well guarded by torpedoes or submarine mines controlled by electricity from the nearest fort or battery. The inadequacy of the present defenses in one locality at least was clearly proved in the maneuvers which took place on Long Island Sound in 1902. By treaty with Great Britain, only one war vessel is permitted for Lake Ontario and one for the other lakes, no harbors being fortified.

Need of.

308. Pension Legislation. — Control of military affairs demands not only preparation for future wars, but reparation for past ones. National honor requires that the families of those soldiers who gave their lives for their country in the time of its extremity shall not be left to suffer for the necessaries of existence. Congress has, in fact, done much more. Any soldier or seaman who saw service in the Civil War, and who is now unable to earn a livelihood, may receive a monthly pension from the government. Such a liberal policy is in keeping with the large-heartedness of

Present laws.

the American Nation, but it is a policy the administration of which opens the way to many abuses.

Two periods (historical).

The pension policy of the United States has passed through two periods of changes. Before 1890, only those who had been actually disabled in service, or who had been left destitute by the death in war of the wage-earner of the family were given pensions. Since 1890, any soldier who suffered the loss of even a finger in battle, or has since become unable to provide for himself, can be placed on the pension list. In 1882, there were but 285,697 persons receiving $54,296,281. In 1902, the number had risen to 999,446, and the expenditures to $138,491,822.

Other Powers of Congress

Power over judiciary.

309. Control over the Other Departments. — The Constitution does not provide for the organization of the judicial department, except to state that there shall be a Supreme Court and such inferior courts as Congress shall establish. The structure of the national judiciary is therefore arranged by congressional statutes. The number of the Supreme Court justices may be increased at any time, and the jurisdiction of most of the courts changed by act of Congress.

Constitution, Art. I, § 8, cl. 9.

Control of executive.

The executive departments which aid the President are created by statute, and may have their organization or powers changed at the wish of the lawmaking body. Their chief dependence upon Congress in practice arises from the power of Congress to give or withhold the money necessary to do their work. Even the President may be coerced into doing the will of Congress in some disputed point, by the failure of Congress to vote "supplies."[1]

[1] This power may, however, be easily overrated. Professor Dewey, in his *Financial History of the United States*, § 205, says, "It is estimated that one half of the current expenses of the government, exclusive of pensions and salaries, is beyond the reach of any particular Congress, except by positive legislative action of a repealing character, requiring the assent of the President, unless overruled by a two thirds vote of Congress."

Collective and individual naturalization.

Constitution, Art. I, § 8, cl. 4.

310. The Process of Naturalization. — Among the essential powers of Congress is that of establishing a uniform rule of naturalization, for it is quite evident that this could not be left to the separate States. Naturalization may be either individual or collective, the latter occurring when a large number of foreigners are made citizens by a single act, such as a treaty or amendment XIV of the Constitution. More commonly naturalization is individual.

Methods under present law.

Under the present naturalization act, passed in 1870, only persons of the white or the negro race may be naturalized, and these can be made citizens only after a residence of five years in this country. The process includes two important steps. (1) The applicant for citizenship must first declare, before some court of record, that he intends to become a citizen of the United States, that he will support the Constitution, and must renounce his previous allegiance to any foreign State or sovereign. (2) Not less than two years after making this declaration, he must prove before a similar court by means of witnesses that he has resided in the country at least five years, and has conducted himself properly. He then renounces his allegiance to his former sovereign and swears to support the Constitution. His wife and minor children become citizens without further formalities.

Historical laws.

The law of 1798 required a residence of fourteen years before an alien could become a citizen, but it lapsed in 1802, and five years has been the time required since, although attempts have been made to lengthen or shorten the period.

National bankruptcy and state insolvency laws.

311. Bankruptcy Laws. — Although Congress is given power to make bankruptcy laws, only four have been passed since 1787, no one of which was in force more than eleven years. The States were meanwhile permitted to pass insolvent laws which could apply only to debts incurred after the law was passed and to debts owed by a citizen of one

State to a citizen of the same State. National bankruptcy laws, on the contrary, absolve a debtor from all legal obligation to pay any of his debts, past as well as future, upon division of his property among his creditors.

Constitution, Art. I, § 8, cl. 4.

The present law, passed in 1898, makes a distinction between voluntary bankrupts and involuntary bankrupts. Any person in debt, except a corporation, may voluntarily become a bankrupt unless he has failed within the six years preceding. Any persons, except laborers, farmers, and national banks, who owe one thousand dollars or more, may be tried in a district court of the United States and adjudged bankrupts.

Law of 1898.

312. Protection of Inventions. — In order to encourage the invention of new mechanical devices, Congress permits the Patent Bureau to issue to inventors patents which grant them the exclusive right to manufacture and sell the patented device for a period of seventeen years. The influence exerted by this system in improving the mechanical methods used in almost every branch of business in the United States cannot be overestimated.

Purpose and effect.

Constitution, Art. I, § 8, cl. 8.

The applicant for a patent must file a very specific written statement showing the exact character of the device, accompanied by drawings and models when necessary. At the same time, he takes oath that he is the actual inventor of the art or machine, and that to his knowledge it has never been patented before. When this application is made, a fee of fifteen dollars is paid, a further fee of twenty dollars being required if the patent is granted.

Process of obtaining patents.

The number of patents granted for inventions from July 28, 1836, when the Bureau was established, to Dec. 31, 1901, was 702,934.

313. The Copyright Laws. — The issuing of copyrights is intrusted to the Librarian of Congress, to whom application must be made, and with whom two copies of each book or drawing is left for the congressional library. The fee is only one dollar, but the exclusive right of publication is granted for a term of twenty-eight years with the privilege of renewal for fourteen years longer.

National copyright.

Constitution, Art. I, § 8, cl. 8.

International copyright.

By the act of March 3, 1891, foreign authors are permitted to copyright books and other articles in this country, provided their government grants the same privileges to American writers, and provided further that the books or drawings are actually printed in the United States.

Library of Congress.

The library of Congress contains a great many valuable books and manuscripts in addition to those left according to copyright laws. These are invaluable to students and to congressmen who wish to gain information on United States history especially. In 1902, the library contained 1,114,111 books and pamphlets, besides large numbers of manuscripts and sheets of music. Since 1897, the library has been located in a separate building, which is a very handsome piece of architecture.

Powers enumerated in the Constitution.

314. Other Express Powers. — Among the many powers of Congress that have not been considered, are several which are specifically enumerated. Among these are the right to establish post offices and post roads (§ 396), to define and punish piracies and felonies committed on the high seas and offenses against the law of nations, to fix the standard of weights and measures, and to punish counterfeiters. Congress may be able to interfere with the government or policy of any State, because it must guarantee to each State a republican form of government. The influence that it may exert upon our federal system of government is very great in its right to propose amendments to the Constitution (§ 237).

Constitution, Art. I, § 8, cls. 5, 6, 7, 10; Art. IV, § 4; Art. V.

Interpretation of the "elastic clause."

315. The Implied Powers of Congress. — If Congress had only the powers granted to it in explicit terms by the Constitution many of the duties that it now performs could never have been undertaken. Fortunately it was given the right "to make all laws which shall be necessary and proper" for executing the powers of the national government. Congress, the President, and the courts, as well as the people of the United States, have construed this "elastic clause" liberally,

Constitution, Art. I, § 8, cl. 18.

and Congress has, therefore, been left free to choose its own means in carrying on its work.

Among the tasks performed by Congress without any direct authority other than that conferred by this clause, are the following: national banks have been chartered, trade has been prohibited with one or more foreign nations, roads have been constructed, rivers and harbors improved, a paper currency established, territory has been acquired, States governed like territories for years, immigration restricted or prohibited, tariffs established chiefly for protective purposes, and bounties paid to farmers and railways, public buildings have been erected, aid has been given education, a postal money order system has been inaugurated, free deliveries given in cities and rural districts, a complete system of weather bureaus established, and provision has been made for the irrigation of arid districts; in addition to hundreds of other acts, great and small, not expressly authorized by the Constitution.

Use of implied powers.

During recent years there has been gaining ground a belief that Congress may exercise what powers it pleases, unless it is brought into conflict with the States. Those who hold this opinion claim that Congress possesses what might be termed "national sovereign power," and they count among their number many high in authority.

"National sovereign power."

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4. The American navy. G. W. Melville, in *Review of Reviews*, XXV (1902), pp. 561–570.
5. History of bankruptcy legislation. W. H. Hotchkiss, in *North American Review*, 167 (1898), pp. 580–591.
6. Hamilton and Jefferson, on "implied powers." MacDonald, *Select Documents* (1776–1861), pp. 76–98.

Practical Questions

1. How large is the army now? Are there any volunteers? Who is the chief of staff? How many officers are on the staff? What departments are there? Newspaper Almanac.
2. Look up the number of vessels of each class in our navy. Compare the navy with that of Germany. What is the difference between a battleship and a cruiser?
3. Under what conditions can Mr. Barrie copyright one of his novels in this country? If two men have patented devices that are very similar, what court decides the right of each (§ 419)?
4. How has treason been punished? Hinsdale, *American Government*, §§ 559–569. What are letters of marque and reprisal? Hinsdale, *ibid.*, § 402.

CHAPTER XXV

CONGRESSIONAL REGULATIONS

316. The Composition of Congress. — The Congress of the United States, like the legislature of the States, is composed of two houses, one of which is much larger than the other. Unlike the state legislatures, the houses of Congress are radically different in character, as the Senate, or upper house, represents the States, each State having two senators chosen by its legislature, whereas the members of the House of Representatives are chosen by the people of the Nation from districts of nearly equal population. It will be remembered (§§ 224–226) that the constitutional convention of 1787 was at no time in favor of having a single chambered Congress, as that of the Confederation had proved so unsatisfactory, while the state legislatures were quite vigorous. Yet the real difference between the Senate and the House in composition was less the result of planning and experience than of the compromise between the large and the small States (§ 226). This compromise — a necessary part of the convention's work — has probably given us the best possible kind of a national legislature, because the two houses are sufficiently unlike to prevent hasty and ill considered legislation and to properly represent the varied interests of our Republic.

Character.

Connecticut compromise (1787).

The Sessions of Congress

317. The Regular Sessions. — Whenever a House of Representatives gives place to a new House, once in two years,

Life of a Congress.

we have a new Congress. For example, the Fifty-seventh Congress lasted from March 4, 1901, to March 4, 1903, being replaced on the second date by the Fifty-eighth.

Long and short sessions.

Constitution, Art. I, § 4, cl. 2.

Each Congress has two regular sessions, one of which begins on the first Monday of December after the Congress comes into existence, and continues into the following summer until the chief bills have been passed or postponed. This is called the long session. The second or short one begins on the first Monday of December following adjournment and closes the Fourth of March, when the Congress expires by limitation.

A serious defect.

The members of the House of Representatives are elected on the Tuesday after the first Monday of November in the even numbered years, and cannot meet until the next Fourth of March. Ordinarily they do not come together until December of the next year. There seems to be a serious need of changing either the time of the election or the date of meeting for Congress. Many things happen nowadays in thirteen months; new questions may arise or the feeling of the people may change. Furthermore, there is no good reason why one session of every Congress should be held after its successor has been elected. If the new Congress is very different from its predecessor, the old one is confronted with the problem of leaving legislation untouched or of enacting laws in accordance with a policy that the people have just repudiated at the polls.

The President and special sessions.

Constitution, Art. II, § 3.

318. Special Sessions of Congress may be called only by the President and not by request of members of the legislature as in most of the States, unless Congress adjourns to meet at a date earlier than the first Monday of December. Special sessions are not common, but at times new laws are so imperative that the President issues his proclamation

summoning a special session for a date named, and giving his reasons for calling the session.

Special sessions of the Senate without the House are called immediately after the inauguration of a President to confirm his appointments for cabinet and other positions. They may also be held to act upon treaties of importance.

Special sessions of the Senate.

If the houses of Congress fail to agree upon a time for final adjournment, the President is authorized by the Constitution to set a date at which the session ends, but his services have never yet been required.

The President and adjournment.

Five sessions of Congress have been convened much earlier than usual, by adjournment from the previous session to a special time. These have been, in fact, if not in law, special sessions. Thirteen extra sessions of both houses have been called by the President.

Provisions Common to Both Houses

319. Each House controls its Internal Organization, being authorized by the Constitution to make its own rules, elect its own officers, decide who are elected members, punish members for disorderly behavior, and compel the attendance of a quorum to do business.

General.

Constitution, Art. I, § 5, cls. 1, 2.

Each house has a Committee on Rules to which all proposed changes are submitted. The Senate always uses the rules of the preceding session until a new set is adopted, but the House must formally adopt rules before they can be applied, although few changes occur from one Congress to another.

Rules.

The officers of the houses are elected at the beginning of each Congress and hold office during the sessions of that Congress.

Officers.

Both the Senate and the House have committees on elections that hear the evidence in disputed cases and report to the houses which of the contestants is entitled to a seat.

Contested elections.

Expulsion of members.

Each house may punish a member for disorder, but even in flagrant cases the punishment is likely to be mild, reprimands being given on occasion, but suspensions very rarely. Two thirds in either house may expel a member, but cases of expulsion are almost unknown, that of Roberts, the congressman from Utah, who was expelled (1900) on the ground of having broken the national law against polygamy, being a notable exception.

Constitution, Art. I, § 5, cls. 1, 4.

320. The Attendance of Members. Adjournment. — No business can be transacted in either house unless a majority of its members, the constitutional quorum, is present. If less than half are in attendance, they may either adjourn or authorize the sergeant-at-arms to compel the others to attend. Neither house is allowed to adjourn more than three days without the consent of the other. At the close of a long session, the date for final adjournment is usually fixed by agreement without great difficulty.

Congressional Journals and Record.

Constitution, Art. I, § 5, cl. 3.

321. The Publications of Congress. — In order to insure a complete record of what is done in Congress, the Constitution provides that "each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy." At present we have a daily paper called the *Congressional Record,* which contains a full report of all speeches delivered, and some others prepared by congressmen, and a bi-weekly Journal which gives a summary of all bills introduced and all votes taken. The yeas and nays may be called for by one fifth of the members (§ 329), and are required upon vetoed bills or proposed amendments of the Constitution. The Journal then shows what members were present and how each voted, as well as which members were absent and which ones were "paired," as it is called when one on each side of a question agrees to refrain from voting.

The Privileges and Disabilities of Members

322. Special Privileges. — When the English Parliament was struggling to limit the power of the King centuries ago, the King was often able to defeat their wishes by arresting the leaders of the opposition. Since the contest between Parliament and the Stuarts, which ended in the complete victory of the former, members of Parliament have been free from interference by the King or his ministers. Some of these privileges were claimed by the legislators in the colonies, and are now granted to congressmen and our state legislators by the constitutions. Members of Congress "shall in all cases except treason, felony, and breach of the peace be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same, and for any speech or debate in either house they shall not be questioned in any other place."

Historical and descriptive.

Constitution, Art. I, § 6, cl. 1.

323. The Pay of Congressmen. — Members of Congress receive from the treasury of the United States a salary of five thousand dollars a year besides traveling expenses — "mileage" of twenty cents a mile. Extra compensation is granted in the form of free delivery of mail upon public business, allowance of money for stationery, and of large numbers of government publications and quantities of free seeds. Senators are also allowed free clerk hire, a privilege not granted to the representatives. Yet with all these perquisites of office, our congressmen are so underpaid that few business men can afford the luxury of holding the position. The shortsightedness of this policy is self-evident.

Compensation and extras.

Constitution, Art. I, § 6, cl. 1.

The Speaker of the House and the president *pro tempore* of the Senate receive eight thousand dollars each per year.

324. The Disabilities of Congressmen. — Great was the dread among the members of the convention which framed

Holding of office.

the Constitution that congressmen might be drawn from the plain path of duty. They accordingly inserted in the Constitution this clause, "no senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the enrollments whereof shall have been increased during such time, and no person holding any office under the United States shall be a member of either house during his continuance in office."

Constitution, Art. I, § 6, cl. 2.

General References

Andrews, *New Manual of the Constitution*, pp. 66–75.
Hinsdale, *The American Government*, §§ 312–330.

Studies

1. The bicameral legislature in history. Wilson, *The State*, §§ 375, 794, 848–853.
2. Congressional compensation. A. Johnston, in Lalor's *Cyclopædia*, III, pp. 673–675.
3. Should the pay of congressmen be increased? Would we probably get better men with higher salaries?

Practical Questions

1. What is the number of the present Congress? When were the representatives chosen? When does their term of office expire?
2. What was the longest single session of Congress? What was the length of the last "long" session? When was the last extra session called? Manuals of the House, under "Congress, Sessions of."
3. Do the members of our state legislature have the same privileges and disabilities as congressmen? How do the rules of our state Senate compare with those of the United States Senate?

CHAPTER XXVI

CONGRESSIONAL METHODS

325. The Organization of a New Congress. — At its first meeting under a new Congress, the Senate swears in the members last elected, and proceeds with its old committees and former rules under the chairmanship of the Vice-president, until the new committees have been arranged (§ 342). **The Senate.**

In the House the organization is a little more elaborate. The clerk of the previous House calls the roll of all of those holding certificates of election, and, if a quorum is present, the House proceeds to swear in its new members, and to elect its Speaker and other officers. When both houses are organized, the President is notified, and his annual message is read before the separate chambers. With the appointment of its committees by the Speaker, and the adoption of a set of Rules, the House is, equally with the Senate, prepared for actual work. **The House.**

The Process of Lawmaking

326. The early Stages of Legislation. — In its earliest form, a law is either a bill or a joint resolution, introduced in the Senate or the House by some member. About one bill in eight is fortunate enough to be enrolled as a part of the law of the land.[1] Most of them never reach a second **Bills and laws.**

[1] Of the 17,560 bills introduced in the fifty-seventh Congress, 2781 were enacted into laws, the proportion being much greater than in any of the Congresses during the previous decade.

reading, which means that they are never read at all; for, when a member introduces a bill in either house, the clerk or secretary reads only the title, the bill being immediately "committed." It is then likely to be "killed in committee."

Introduction of bills.

Members are not allowed to introduce bills when they please, for the houses are too busy to consider new bills except on stated days. In the House, for example, new bills must be introduced upon the first and third Mondays of each month. If a member has a bill to bring before the House, he takes it on those days to the desk of the Speaker or the clerk, and has the pleasure of listening to the reading of the title when the roll of the States is called.

The calendars.

327. Report of Bills. — If the bill has enough friends, or is of sufficient importance, it is in time reported back by the committee to the House and placed upon the "calendar," after being read the second time. The committee may have altered the original measure so as to destroy all of its essential features, and it may be further changed when an opportunity is given later for debate and amendment, before the third reading and final vote. Bills are not, however, taken from the calendar in regular order, as appropriation bills and others of particular importance may be reported and discussed at any time. In the House, bills are taken from the calendar for consideration in the order prescribed by the Committee on Rules (§ 353).

In the House.

328. Debate upon a Bill. — The chief difference between the methods of the Senate and the House is observable in connection with the discussion of proposed laws. The House allows comparatively little debate, no one being permitted to speak who has not first obtained the consent of the Speaker or of the chairman of the committee in charge of the bill, for the Speaker gives the privilege of the floor to those only whom he wishes to recognize. According to

the rules of the House, debate may be closed at any time by having one of the supporters of the bill move the "previous question," which gives the majority an opportunity to decide whether a vote shall be taken upon it at once.

In the Senate, on the contrary, there is no rule limiting debate, which has often continued for weeks upon some important bill, as in the spring of 1902, on the one establishing a Civil Government for the Philippine Islands. This gives the minority an opportunity to delay action, by "filibustering," as it is called, a method that is now impossible in the House. **In the Senate.**

329. The Taking of a Vote. — When a bill has been read for the third time, the vote upon it may be taken in one of three ways, a majority of those present being necessary for its passage. (1) The usual method is to call for the ayes and noes, the presiding officer deciding from the sound whether the measure has passed. (2) When the result is in doubt, or a member asks for a rising vote, this is taken and each side is counted. (3) If one fifth of the members wish to have the roll call, the clerk reads the names alphabetically, the vote of each being recorded. When the roll is called unexpectedly, there is always an interesting hunt for the members of the House who may be in the building, but not in the legislative hall. **The three methods.**

An active canvass for votes may be necessary in order to insure the passage of a measure. Votes for one bill are often secured by promising support for another, a practice known as "log rolling." It is safe to say that earnest personal appeal exerts more influence than public debate. With party measures which fail to interest all the members of the dominant party, various tactics are employed to gain the support of those likely to oppose the bill. Among the means used to this end, the most effective consists in hold- **Ways of securing votes.**

ing a caucus of all the party members belonging to the House. If the caucus indorses the bill, a full party vote is assured, as few men will vote against their party under such circumstances.

Organization of the House, LI Congress.

A kind of "filibustering" used on former notable occasions is now forbidden by the rules of the House. As organized in December, 1889, the House contained a very small majority of Republicans, and, owing to the absence of several members, Speaker Reed was able to obtain a quorum only by counting Democrats who were present, but who refused to vote. This action was opposed at the time with great vigor and gave the Speaker the title of "Czar Reed," yet ever since members present but not voting have been counted.

Unaltered bills.

330. The Bill in the Second Chamber. — When a bill has been passed by one house and signed by the presiding officer of that body, it is sent to the other chamber where the three readings, the reference to a committee, and the discussion will be repeated. If it is approved by this house without alteration, it is signed and sent to the President, but if amended in any particular, it must be returned to the house which passed the original bill, because the measure adopted by the two houses must be identical in every particular. The second house may even go so far as to substitute for the original bill an entirely different one relating to the same subject. This was done by the Senate in the closing days of the first session of the Fifty-seventh Congress, in regard to an interoceanic canal. The House bill provided for the construction of a canal across Nicaragua, and the Senate substituted the Panama route, with the proviso, that, if no clear title could be obtained to the Panama route, the President should be authorized to construct the canal by way of Nicaragua. Strangely enough, the Senate bill passed the House by an overwhelming majority, but in such cases it is usually necessary to resort to a conference committee.

Substitute bills.

WHITE HOUSE
JAN 20 1903
RECEIVED.

H. R. 15006.

Fifty-seventh Congress of the United States of America;

At the Second Session,

Begun and held at the City of Washington on Monday, the first day of December, one thousand nine hundred and two.

AN ACT

To establish Portal, North Dakota, a subport of entry and extend thereto the privileges of the first section of the Act approved June tenth, eighteen hundred and eighty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Portal, North Dakota, be, and is hereby, designated a subport of entry in the customs collection district of North and South Dakota, and that the privileges of the first section of the Act approved June tenth, eighteen hundred and eighty, entitled "An Act to amend the statutes in relation to the immediate transportation of dutiable goods, and for other purposes," be, and the same are hereby, extended to said subport.

J. G. Cannon
Speaker of the House of Representatives.

Chas. W. Fairbanks
President of the Senate pro tempore.

Approved,
January 22, 1903.
Theodore Roosevelt

THE FORM OF A LAW.

Composition and work.

331. Conference Committees. — A conference committee is composed of an equal number of members from each house of Congress, selected for the sole purpose of reconciling the differences between the Senate and House bills upon a particular subject. Each chamber usually selects three of its best men as its representatives, choosing those who have been most interested in its bill. The conference committee may select the Senate or House bill *in toto*, but this is unusual. The compromise bill reported by the committee is very often accepted by both houses without discussion or amendment, although a second conference may be required, or the bill may be defeated in one or both houses.

The ordinary veto.

Constitution, Art. I, § 7, cls. 2, 3.

332. The Presidential Veto. — When a bill has been presented to the President for his signature, he is allowed by law ten days, exclusive of holidays and Sundays, in which to sign it. If he fails to sign it or return it to Congress within that time, it becomes a law without his signature. Bills which he disapproves are returned to the house in which they originated, with a message giving the reasons for his veto. A vetoed bill must command a two thirds vote in each house before it becomes a law. This majority very few measures can obtain, especially with the weight of the President's disapproval against them. In fact, but one bill was passed over the President's veto before 1866, although we must remember that the chief executives of those days were much more chary of using the veto than in these later times, when Congress enacts laws with greater haste.

The pocket veto.

A bill passed less than ten days before the adjournment of Congress does not become a law unless actually signed by the President. Neglect in cases of this kind is equivalent to a veto, the name "pocket veto" being popularly applied to the practice. On account of the large number of bills

which are passed during the closing days of a session, the President may be able to exercise an undue influence upon legislation. Many of these bills are, however, hastily drawn and ill-considered, so that on the whole their failure does not injure the public.

The Committee System

333. The Place of the Committees in Lawmaking. — The most distinctive feature of congressional procedure is the use of committees in making laws. The committees are the center and life of Congress, doing the larger part of the work in framing important bills — although these may be actually introduced by individual members — in investigating subjects before either house, and in concentrating the discussion in the chambers upon a few vital questions. As the House has always been larger than the Senate, a much greater dependence has been placed by it upon committees, standing committees having been used in the House from the beginning, whereas the earliest permanent committee of the Senate dates from 1816. **Importance of the committees.**

334. The Composition of the Committees. — The committees are usually composed of from ten to fifteen members, some having as few as three, and others, in the House, as many as eighteen, the largest Senate committee numbering seventeen. The majority of each committee belongs to the dominant party, except for a few unimportant Senate committees; but every member of the House is on at least one committee, and every senator is assigned to not less than four. A few representatives are connected with three or even four committees, and many senators work on six or seven. **Size.**

In the House, the committees are selected by the Speaker, **Selection.**

and in the Senate the appointments are made by the whole Senate (§ 342). In both houses, the member whose name appears first on the list of committeemen is the chairman.

Importance and exercise.

335. The Commitment of Bills. — So numerous are the committees that their duties frequently overlap. Many bills may, therefore, be assigned to any one of two or more committees. There is often a sharp contest between chairmen for the control of important measures, and, as the different committees would be likely to make very different reports, the right to decide which shall have it is of the first importance. In the House, this power belongs to the Speaker, but, in the Senate, it is reserved by chamber, although ordinarily exercised by the presiding officer.

Committee meetings.

336. The Committees at Work. — The committees usually hold their meetings upon certain mornings, many of them having separate rooms for this purpose. The sessions are supposed to be secret, but are not strictly so, although no records of their proceedings are published. Most of the work at these meetings is done by the members of the majority, whose leaders, in fact, often arrange all important details beforehand. Subcommittees are frequently appointed to examine and report upon special features of a bill. In the regular sessions, the committees hear the reports of individuals or of these subcommittees, listen to the statements of business men, whose line of work would be affected by the committee's action, examine experts, confer with subordinate officials of some executive department of the government, and discuss the bills under consideration.

Select and joint committees.

337. Special Committees. — Besides the standing committees there are many selected by the Senate or House to report upon special subjects (usually called select committees), and joint committees composed of members from

both houses. The House of Representatives has two Committees of the Whole, one of which deals with financial bills and the other with private bills.

Committee of the Whole.

When the House resolves itself into Committee of the Whole, the Speaker always calls some one else to the chair, as he sometimes does in the House proper. But the presiding officer cannot make any one attend the committee. Neither does he have the right to maintain order by force. The quorum instead of being one half the members, is only one hundred. As sessions of the Committees of the Whole are held for the express purpose of debating proposed laws, speech is not subject to the same limitations as in the House. When a committee has finished the business in hand, it rises and reports to the House, which is in no way bound by the action of the committee.

General References

James and Sanford, *Government in State and Nation*, pp. 166–181.

Bryce, *The American Commonwealth*, abridged ed., pp. 108–130, 140–142, 163–165.

G. F. Hoar, "The Conduct of Business in Congress," in *North American Review*, 128 (1879), pp. 113, *et seq.*

J. L. Mitchell, "How Laws are Made," in *North American Review*, 159 (1894), pp. 537–544.

A. R. Spofford, "Parliamentary Law," in Lalor's *Cyclopædia*, III, pp. 71–94.

Wilson, *Congressional Government*, pp. 64–129.

McConachie, *Congressional Committees.*

Topic

THE VETO POWER: Bryce, *American Commonwealth*, abridged ed., pp. 41–44, 163–165; Harrison, *This Country of Ours*, pp. 126–134; Cooley, *Constitutional Law*, pp. 166–169; A. Johnston, in Lalor's *Cyclopædia*, III, pp. 642–645, 1064–1067.

Studies

1. The House at work. Bryce, *American Commonwealth*, abridged ed., pp. 108–114; T. B. Reed, in *North American Review*, 146 (1897), pp. 646–650.

2. Difficulties in passing laws. Lodge, *Historical and Political Essays*, pp. 169–179.

3. Defects of the committee system. Bryce, *American Commonwealth*, abridged ed., pp. 119–122.

4. Conference committees. McConachie, *Congressional Committees*, pp. 245–253.

5. A Committee of the Whole. McConachie, *Congressional Committees*, pp. 92–101.

6. The vetoes of President Johnson. Burgess, *Reconstruction and the Constitution*, pp. 66–73, 88–90, 122, 126–133, 140–142.

Practical Questions

1. Select some bill under consideration at the most recent session of Congress, and learn when it was first introduced, to what committee it was assigned, when it was reported, how long it was debated, and the final vote upon it within that chamber.

2. Were any important bills given to conference committees at the last session? Were any vetoed by the President?

3. To what House committees would the following bills naturally be assigned (in case it might appropriately be given to more than one, name all): Isthmian Canal bill; bill appropriating fifty thousand dollars for a public building; a pension bill; a bill enlarging the powers of the Interstate Commerce Commission; amendment to the Constitution; a bankruptcy bill; a resolution to admit Porto Rico as a State; a tariff bill for the Philippine Islands; a bill for revising the law of copyright, for granting land to a transcontinental railway? List of committees in *Congressional Directory;* duties of committees in Senate and House Manuals.

CHAPTER XXVII

THE SENATE

338. The General Character of the Senate. — The Senate of the United States is one of the smallest and most satisfactory national legislative bodies in the world. It is composed of two members from every State, all of whom must be at least thirty years of age, have been citizens of the United States at least nine years, and be residents of the States from which they are chosen. The term of office is six years, and as the senators are divided into three classes, so that one third retires every two years, the Senate is a continuous body. On account of its small size and its semi-permanent character, the Senate is able to discuss public business much more thoroughly than the unwieldy House of Representatives. It is, therefore, especially fitted for the work of confirming appointments and ratifying treaties made by the President, these being the chief special powers conferred upon the Senate by the Constitution.

Composition and special powers.

Constitution, Art. I, § 3, cls. 1–3.

Composition and Organization

339. The Election of Senators. — As the senators are supposed to be the special representatives of the States in the national government, they are chosen by the respective state legislatures. Since 1866, the methods used by the legislatures in senatorial elections have been the same throughout the United States. On the second Tuesday

Procedure in the legislatures.

after the meeting of a state legislature upon which the election devolves, the members of the separate houses are to name by *viva voce* vote their choice for the position, and a joint session is to be held the next day, a majority of each house being present. If no one is elected on the first ballot, joint sessions are held daily at noon until a senator is selected. The choice, of course, always falls upon the candidate of the party which has a majority in the state legislature, this candidate having often been previously selected by a caucus. Sometimes, however, the majority fails to agree upon a candidate, and disagreement may even be carried so far that the State has no representative in the United States Senate, as was the case with Delaware in 1902.

Constitution, Art. I, § 4, cl. 1.

Vacancies.

When a vacancy occurs by death or resignation during the recess of the legislature, the governor may appoint some one until the next legislature shall choose a senator in the way just described. But when a legislature has failed to elect a senator and the governor makes an appointment for the vacancy, the Senate has always refused to admit the appointee as a member.

Constitution, Art. I, § 3, cl. 2.

Demand for popular election.

340. Proposed Changes in the Election of Senators. — During the last decade there has been a widespread and constantly growing demand for a change in the method of electing senators. Four successive Houses of Representatives have passed, by almost unanimous votes, resolutions which propose to amend the United States Constitution in order that senators may be chosen by popular vote, but the resolutions have never been even discussed in the Senate. The cause of the movement for popular election lies in the general belief that the legislatures are thwarting rather than expressing the wishes of the people, and is closely allied to the distrust which has shorn our state legislatures of many

of their powers (§§ 155–157). As a means of avoiding the protracted contests in the legislatures, which are becoming much more common and seriously interfering with state business, and as a preventive of possible bribery, popular election would undoubtedly be a success.

In her present constitution, adopted in 1875, Nebraska provides that the voters shall be allowed to express their preference for senator at the regular November election.

Nebraska method.

341. The Officers of the Senate. — The presiding officer of the Senate is the Vice-president of the United States, who is not chosen by that body but is elected at the same time and in the same way as the President (§§ 359–365). Not being really a member of the Senate, he does not appoint the committees nor control business. He has a vote only when the Senate is equally divided. In case of his absence, death, or elevation to the presidency, his place is filled by a president *pro tempore* of the Senate, selected by the senators from their own membership.

Vice-president.

Constitution, Art. I, § 3, cl. 5.

The Senate has a secretary with a score of assistants, a sergeant-at-arms who maintains order, a postmaster, a doorkeeper, and each senator has a private secretary who is paid out of the public treasury.

Other officers.

342. The Selection of the Senate Committees. — Like the House of Representatives, the Senate does a large part of its work through committees. The selection of the committees is left with the party that controls the Senate at the beginning of each Congress, but certain rules are usually observed. The majority of the members upon all important committees belong to the party in power, who retain the chairmanships with possibly a very few unimportant exceptions. The chairman of any committee is not chosen arbitrarily, but is the committee member who has served longest upon the committee, unless he voluntarily relinquishes his position by preferring another more

Rules followed.

important chairmanship. In case a chairman dies or resigns, the position falls to the committeeman who has seen the greatest length of service, so that in the Senate "seniority" is a fixed rule, and a fair evidence of senatorial conservatism.

Lack of the previous question.

There are at present (1903) fifty-five standing and several select committees, the membership varying from three to seventeen. Among the important committees are the Appropriations, Commerce, Finance, Foreign Relations, and the Judiciary Committees.

343. Senatorial Debate. — The Senate spends a large part of its time in discussing public questions, but it has never been willing to adopt a rule that would limit the debate. This is done in most deliberative assemblies by asking for the "previous question," which brings to a vote the question before the house. The Senate relies upon its natural dignity to keep the debate within bounds, but at times the lack of the "previous question" is painfully evident, for the minority have occasionally protracted the discussion, and delayed much-needed action for purely selfish or partisan motives.

Special Powers of the Senate

Senatorial courtesy.

Constitution, Art. II, § 2, cl. 2.

344. Appointments and Treaties. — A large part of the authority and influence of the Senate is derived from its power to confirm all important appointments made by the President. Because of the double system of choosing officials, there has become fixed a custom called "senatorial courtesy" which leaves with the senators the actual selection of most persons holding national offices within their States.

Treaties.

As we shall see (§§ 376–377), treaties are made by the President through the Department of State, but they do not take effect until approved by two thirds of the Senate.

The Senate is a real power in treaty making, as it never hesitates to amend any articles or reject an entire treaty.

Executive sessions.

When acting upon presidential appointments or discussing treaties, the Senate goes into "executive session," the doors being closed and the proceedings remaining secret. During Washington's first administration, all of the sessions were secret and the strictest decorum was maintained in the Senate chamber, but secrecy has seemed unnecessary except for business related to the executive department, and the public has since been admitted to all but executive sessions.

In the first draft of the Constitution — the report of the Committee on Detail — the Senate had sole power to make treaties and appoint ambassadors and judges of the Supreme Court.

Process, and effect of conviction.

Constitution, Art. I, § 2, cl. 5; § 3, cls. 6, 7; Art. II, § 4.

345. The Trial of Impeachment Cases. — In addition to these executive duties, the Senate has one of a distinctly judicial nature. When any "civil officer" of the United States government is impeached by the House of Representatives for "treason, bribery, or other high crimes or misdemeanors," the Senate sits as a court and hears the testimony for and against the official. No official can be convicted except by a vote of two thirds of all the senators present, and conviction carries with it only removal from office and disability to hold any other office under the United States, but the person may then be tried for crime like any other individual.

Trial of President Johnson.

Although the framers of the Constitution were sincere in their belief that impeachment could be relied upon as a valuable check upon public servants, the method has been used but seven times in all, with only two convictions. By far the most interesting trial upon impeachment by the House was that of Andrew Johnson, President of the

United States, in 1868. Johnson had endeavored to carry through for the Southern States a reconstruction policy of his own, and had persistently vetoed many reconstruction bills of Congress, which he believed to be unconstitutional, because passed by a Congress in which the seceded States were not represented. Congress retaliated by depriving Johnson of the practical command of the army, and of the right to make removals from office — a power never before denied the President (§ 375). Johnson ignored this latter act and sought to remove Edwin M. Stanton, the Secretary of War. This brought matters to a climax, and on Feb. 24, 1868, the House of Representatives voted (126 to 47) to impeach the President. A few days later eleven charges were brought against him before the Senate, over which the Chief Justice of the Supreme Court presided, as the Constitution required. Two months later, May 16, he was acquitted by a vote of 35 to 19, a two-thirds majority not having been obtained.

Historical trials.

The two persons convicted were both district judges of the United States. Pickering, judge for New Hampshire (1804), charged with drunkenness and profanity, and Humphreys, judge for Tennessee (1862), for disloyalty. Four others have been tried for impeachment: Chase, justice of the Supreme Court (1805), Peck, district judge for Missouri (1830), Johnson, President of the United States (1868), and Belknap, Secretary of War (1876), all of whom were acquitted. In 1797 Senator Blount of Tennessee was impeached by the House, but the Senate decided by a vote of 15 to 11 that congressmen were not "civil officers of the United States."

Election of Vice-president.

Constitution, Amend. XII.

346. Other Special Powers. — The Senate is called upon to elect a Vice-president whenever the electors fail to do so. The choice is limited to the two persons receiving the greatest number of electoral votes. At least two thirds of the senators must be present, and the person elected must have a majority of all the senators, whether present or not.

Only once in our history (1837) has it been necessary for the Senate to ballot for Vice-president.

Financial powers.

Constitution, Art. I, § 7, cl. 1.

Except in relation to just one subject, the Senate has the same powers of legislation as the House. "All bills for raising revenues shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills." As this topic will be treated fully in the next chapter, only a suggestion or two need be given here. It will be noticed that the provision deals only with bills for raising revenue, and not with those expending it. Further, while the Senate has no initiative in obtaining money, the right to amend revenue bills gives it almost as much power as the House in finance.

General References

Bryce, *The American Commonwealth*, abridged ed., pp. 71–93.

Lodge, "The Senate of the United States," in *Scribner's Magazine*, XXXIV (1903).

Wilson, *Congressional Government*, pp. 193–241.

McConachie, *Congressional Committees*, pp. 259–348.

Topics

THE IMPEACHMENT OF PRESIDENT JOHNSON: Sherman, *Recollection of Forty Years*, I, pp. 413–432; Blaine, *Twenty Years in Congress*, II, pp. 341–384; Cox, *Three Decades of Federal Legislation*, pp. 578–594; E. G. Ross, in *Scribner's Magazine*, XI (1892), pp. 519–524; Burgess, *Reconstruction and the Constitution*, pp. 172–192; Dunning, *Civil War and Reconstruction*, pp. 253–303; Chadsey, *Struggle between President Johnson and Congress*, Chapter VI.

POPULAR ELECTION OF SENATORS: W. F. Garrison, in *Atlantic Monthly*, LXVIII (1891), pp. 227–232; G. F. Edmunds, in *Forum*, XVIII (1894), pp. 270–278; J. H. Mitchell, in *Forum*, XXI (1896), pp. 385–397; J. Haynes, in *Johns Hopkins University Studies*, XI, pp. 547–560.

Studies

1. The Senate — its working and influence. Bryce, *The American Commonwealth*, abridged ed., pp. 83–93.

2. The treaty-making power of the Senate. H. C. Lodge, in *Scribner's*, XXXI (1902), pp. 33–43.

3. Impeachment—historical and descriptive. Harrison, *This Country of Ours*, pp. 148–158.

Practical Questions

1. How many senators were there April 30, 1789? (Give the number of States in the Union on that date.) What is the number now? Are there any vacancies now? To what are they due? How are the political parties represented in the present Senate? *Congressional Directory*.

2. Give the names of our senators. When do their terms close? How long have they been in the Senate? What official positions had each held before his election to the Senate? To what party does each belong? Does either come from this part of the State? *Congressional Directory*.

3. What is the number of standing committees in the Senate now? Are there many special or joint committees? Name the chairman of the most important committees. Of what committees are our senators chairmen? *Congressional Directory*.

4. What officials are appointed by the President in this county? What treaties were ratified by the Senate during the last Congress? Have any treaties been rejected by the Senate recently?

5. What is the smallest number of senators who at the present time can pass an ordinary bill? ratify a treaty? elect a Vice-president?

6. How can the Constitution be amended without consulting the Senate? Constitution, Art. V. What officials can be removed from office only through impeachment? Art. II, § 4. How can a congressman be removed? Art. I, § 5.

THE SENATE CHAMBER.

THE HALL OF REPRESENTATIVES.

CHAPTER XXVIII

THE HOUSE OF REPRESENTATIVES

347. General Character of the House. — The larger branch of Congress, called the House of Representatives, is a body of almost four hundred members elected every two years from districts of nearly equal population. The representation from any State depends upon its population, but every State has at least one representative. In the making of the ordinary laws, the House has equal power with the Senate. Because it is the more popular body, it exercises the right to originate all money bills, to elect a President in case the electoral college fails of a choice (§ 364), and to bring articles of impeachment against any civil officer for treason or for high misdemeanors in office.

Composition and special powers.

Composition and Organization

348. The Apportionment of Representatives. — The number of representatives to which any State may be entitled is determined by the population as shown in the decennial census. Congress selects some number as a ratio, and divides that number into the population of each State, granting the States representatives not only for the number given in the quotient, but for all additional fractions of more than one half. For example, in 1891, it was decided to have one representative for every 173,901 of the population, giving a House of 356 members, with one added for Utah in 1896. In 1901, this number was increased to

Census and the ratio.

Constitution, Art. I, § 2, cl. 3; Amend. XIV, § 2.

194,182, a ratio which possessed the merit of not decreasing the representation in any State, although adding 29 to the membership of the House, making 386 members for that body.

Apportionments before 1865.

Until the abolition of slavery in 1865, five slaves were counted as equal to three white persons for purposes of apportionment, the representation from the South being therefore proportionally smaller before the Civil War than since that time.

Apportionment and suffrage laws.

According to the XIV amendment, any State which denies to any of its adult male citizens the right to vote shall have its representation in the House reduced in the proportion that the number of excluded citizens bears to the total of male citizens over twenty-one years of age. The object of this was to force the Southern States to give negroes the right to vote; but by the XV amendment, the right of suffrage was granted them by the national Constitution, so that this clause became less necessary. Many believe that the recent changes in the suffrage laws of the South (§ 27) violate this part of the Constitution, but in the only case involving these laws which has as yet been brought before the Supreme Court of the United States — the so-called "Alabama Case" — the court declined, April 27, 1903, to interfere with the administration of the Alabama franchise law.

Character of districts.

349. The Redistricting of a State. — If a State's representation is changed by any reapportionment, the legislature at the next session divides the State into the proper number of districts, each of which must, according to the congressional law, contain as nearly the same population as possible, and be compact and contiguous. This is to prevent so far as may be the evils of gerrymandering, which unscrupulous majorities in state legislatures are willing to employ for their own benefit (§ 144). If the number of representatives in the State is the same as for the previous decade, and if there has been no greater increase in population in one section than in another, no redistricting will take place.

Representatives at large.

Some States whose representation has been increased gain permission to have the additional members elected from the whole State in order to avoid the task of rearranging the districts. When a legislature does not meet between the passage of an apportionment law and a

congressional election and its state representation has been increased, a representative at large is elected of necessity, and, if its representation is reduced, as Maine's was in 1882, all of its representatives are elected on a general ticket.

Before 1842, the States were allowed to elect their representatives by general ticket or by districts, but the apportionment bill of that year required uniformity by making the district system obligatory, and all later bills have done the same.

Method of election before 1842.

350. The Election of Representatives. — Except in three States,[1] the congressional elections occur on the Tuesday after the first Monday of November in the even numbered years. The nominations of candidates are almost invariably made by conventions of delegates from the towns or precincts of which the district is composed. No one is nominated unless he is a resident of the State, at least twenty-five years of age, and has been a citizen of the United States at least seven years, for the national Constitution expressly states that these shall be the minimum qualifications of representatives.

Nominations and elections.

Constitution, Art. I, § 2, cl. 2.

There is no national suffrage law. Those who may vote for members of the lower house of the state legislature may also vote for congressmen. This leaves the question of suffrage wholly with the States, subject to the restriction of the XV amendment of the United States Constitution that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Who may vote for representatives.

Constitution, Art. I, § 2, cl. 1.

351. Contested Elections. — The candidate who, upon the face of the returns, receives a plurality of the votes cast, receives a certificate of election from the governor of the State, and is permitted to take his seat in the House when that body is organized. If an unsuccessful candidate dis-

Process of deciding contests.

[1] Oregon, Maine, Vermont.

putes his election, the case is carried before a House Committee on Elections, without, however, interfering with the successful candidate's right to attend sessions and vote. A liberal sum is allowed by Congress to each of the contestants to prove his claims, and often several weeks elapse before all the evidence has been taken. The committee then reports to the House, and, quite frequently by a party vote, the House decides who is entitled to the seat.

Selection and powers.

352. The Speaker. — At the beginning of each Congress, the most important task of the House is to elect its Speaker. This officer, who presides over the deliberations of the House, is probably more powerful than any other person connected with our system of governments, with the sole exception of the President of the United States. He is the leader of the majority, and is selected by a caucus of the majority before Congress meets, his election in the House being therefore of a formal nature. His chief powers are four in number. (1) He appoints all of the committees and selects the chairmen. (2) He assigns to the different committees the bills which the House wishes to commit. This gives him an opportunity, if two chairmen desire to investigate and report upon the same bill, to select the committee most in sympathy with his own views. (3) He recognizes whom he pleases on the floor of the House, and in consequence may easily limit the debate of the opposition upon any bill by refusing to give the floor to one of their number. The House has found it necessary to give the Speaker this somewhat arbitrary authority in order to protect itself from the debating "filibusterer," who can in this way be silenced almost as effectually as by the previous question (§ 328). (4) The Speaker is the chairman of the Committee on Rules, the most powerful of the House committees.

Powers.

353. The Committee on Rules practically arranges the pro-

gramme of business for the House. It decides what committee shall be allowed to report on a certain day and what length of time shall be given for discussing the report. By discriminating between the reports of committees and giving the time of the House to those that it deems important, it enables the House to make headway with the vast number of bills reported back to it, and saves it from frittering away its time on non-essential measures. In other words, it does for the reports of the committees what each committee does with the bills assigned to it — sifts out those that need attention and secures action upon these.

Composition.

The Committee on Rules consists of five of the ablest and most experienced representatives, but the real power of the committee rests with the Speaker and the two other members belonging to the dominant party, for these three are, to all intent and purposes, the committee.

Special Powers of the House

Revenue and appropriation bills.

354. Control of Financial Measures. — Bills for raising revenue must originate in the House, although they may be amended by the Senate in the same way as other bills. Nevertheless, the financial powers of the House, as shown in its control of both revenue and appropriation bills, are by far the most important that it exercises. To care for this part of its work, it has a rather complicated arrangement of committees which includes a Committee on Ways and Means, to which all revenue bills are referred, and over a dozen committees on appropriations, which consider different phases of the government's expenditures. When the House wishes to debate any measure which deals with finance, it resolves itself into a "Committee of the Whole House on the State of the Union" (§ 337).

355. Revenue Bills. — The Committee on Ways and Means,

Committee on Ways and Means.

which in fact if not in theory arranges the elaborate schedules of tariff bills, and bills altering the internal revenue system (§ 269, 271), has always been placed at or near the head of the committees of Congress in dignity and in power. Radical changes do not occur at every session, but usually at intervals of from three to ten years, the influence exercised by the Committee on Ways and Means being indicated by the fact that a new tariff is popularly known by the name of the chairman of that committee, as *e.g.* the McKinley tariff of 1890, or the Dingley tariff of 1897. But, although the Committee on Ways and Means ordinarily places an indelible stamp upon each revenue measure, the original bill is often very different from the one that is enacted into law, for the House in the Committee of the Whole may not approve the work of its committee and consequently favor numerous alterations, while the Senate is sure to make many changes which no conference committee can induce it to drop. In 1893 the bill reported by chairman Wilson proposing a tariff for revenue only, was so changed in the Senate that the tariff was not known as the Wilson tariff, but as the Gorman-Wilson tariff.

Revenue bills in House and Senate.

Influence of Secretary of Treasury.

Many of the bills introduced in the House by the Committee on Ways and Means have been greatly influenced by the suggestions of the President or the Secretary of the Treasury. This was especially true during Washington's administrations, when Alexander Hamilton was in charge of the Treasury portfolio.

Number of appropriations committees.

356. Appropriation Bills. — Every regular session of Congress brings with it general appropriation bills, and many special ones dealing with the expenditures upon rivers and harbors, the army, the navy, and other subjects.[1] At the

[1] Appropriations are classified as "permanent," "permanent specific," and "annual."

present time fourteen committees have charge of the different bills upon expenditures. As they are not obliged to work together and do not make a special effort to have the appropriations equal the government's income, there is either a considerable surplus or a large deficit shown on the Nation's balance sheet.

Treasury estimates.

It is customary for the Secretary of the Treasury to have the chief officials of the Treasury and other departments make, in the fall of each year, estimates of the amount of money needed for the year beginning the first of the following July. These estimates are bound together, and sent with the Secretary's report to Congress when it meets. These estimates are assigned to the proper committees, and are usually the bases of the committees' report, but the committees are not bound by the estimates of the executive departments. When a bill making appropriations is reported to the House, that body considers it in Committee of the Whole on the state of the Union. In times past this consideration has been careful and thorough, but with the multiplication of appropriation bills the House has given less attention to the subject. It might be stated that the committees usually recommend a much smaller amount than that asked in the estimate. In the Senate an appropriation is likely to be increased, and finally, when the conference committee reports, it is probably the close of the session, and the conference bill is passed without much debate on its merits.

Appropriation bills in Congress.

The House at work.

357. Characteristics of the House. — The meetings of the lower house are held in a large hall in the south wing of the Capitol. The desks of the members are arranged in semicircular form about that of the Speaker, the Republicans on his left and the Democrats on his right. When a congressman gains the floor, he may speak from his seat or from the space before the Speaker's desk. In either case he is likely to receive scant attention, as the hall is almost always so noisy that difficulty is found in hearing any but the best orators. Unless the subject is one of considerable importance, the members are quite often in adjoining rooms, or if present are devoting their time to something else. For

these reasons, speaking and debating is much less prominent in the House than in the Senate, where the smaller room, and the more orderly deportment, give opportunities for speakers to present their views to advantage.

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Wilson, *Congressional Government*, pp. 58–192.
McConachie, *Congressional Committees*, pp. 37–258.
Follett, *The Speaker of the House of Representatives.*

Topics

THE SPEAKER OF THE HOUSE: Bryce, *American Commonwealth*, abridged ed., pp. 104–107; H. L. Nelson, in *Atlantic Monthly*, LXIV (1889), pp. 64–73; E. Cockrell, in *Arena*, XXII (1899), pp. 653–666; Hart, *Essays on American Government*, I; Follett, *Speaker of the House*, especially Chapters III and XI.

FINANCIAL METHODS: Bryce, *American Commonwealth*, abridged ed., pp. 131–137; McConachie, *Congressional Committees*, pp. 175–189; Wilson, *Congressional Government*, III; Adams, *Science of Finance*, pp. 150–153, 157–160, 166–177.

Studies

1. The Committee on Rules. McConachie, *Congressional Committees*, pp. 191–207.

2. The Senate and the House. Bryce, *American Commonwealth*, abridged ed., pp. 138–142.

Practical Questions

1. How many congressional districts are there in this State? In which one do we live? Which counties (if more than one) are comprised in it? How does it compare in area and population with others of the State? Newspaper Almanacs.

2. Who is our representative at present? How many terms has he been in Congress? On what committees does he serve? How many members has each political party in the present house? *Congressional Directory.*

3. Name in order the six committees you consider most important, and give the chairman of each. Who is the Speaker of the House?

4. In what year were the representatives chosen who elected Jefferson? Who voted for Adams? Look up the composition of the houses in session in February, 1801, and February, 1825, and compare them with the houses elected in November, 1800, and in November, 1824. Was the election of these Presidents strictly in accordance with democratic principles?

CHAPTER XXIX

THE SELECTION OF A PRESIDENT

Reasons for his prominence.

358. The President's Position. — The most conspicuous personage connected with our system of governments is unquestionably the President of the United States. This is due not only to the method of election, which serves to center popular interest in the presidency every four years, but to the prominence of the duties assigned to our chief executive, and the great concentration of power in his hands (§ 370).

In the control of military affairs and in affairs of peace, as well as in international relations, his is the central figure, representing most nearly the dignity and sovereignty of the Nation.

The Process of Election

Three steps in election.

359. The Selection of Delegates to the National Conventions. — The election of a President involves three steps: the nomination, the choice of presidential electors, which occurs in November of the leap years,[1] and the meeting of the electors to vote for President and Vice-president the following winter.

Selection by districts and by States.

Nominations are always made by conventions composed of party delegates from the different States or congressional districts. The time and place for holding a convention are decided by the national committee of each party, which in-

[1] 1800 and 1900 were also presidential years.

structs the different congressional districts to elect two delegates and two alternates who shall represent the districts in the convention. The States are at the same time requested to appoint four delegates at large, as representatives of the State, so that there are twice as many delegates as there are members of Congress. An effort is usually made, by the men who wish to be nominated for the presidency, to secure the election of delegates favorable to themselves, and to have the district conventions which select the delegates instruct the latter how to vote in the national convention. For this reason, it may be known before the convention meets who will be the presidential nominee of the party.

Committee reports.

360. A National Convention at Work. — Upon the day appointed by the national committee, the convention is called to order by the chairman of that committee. A temporary chairman is chosen and several committees are appointed, consisting of one member from each State selected by that State's delegation. One of these learns what delegates have been elected to the convention, and another drafts a platform. After the convention has decided which of two contesting delegations was duly elected, and has debated and adopted a platform setting forth the principles of the party, the roll of the States is called, and nominations are then in order. Even when there is no doubt about which presidential candidate will be chosen, favorite sons of the different States are often nominated and given complimentary votes on the first ballot. Ordinarily from five to ten contestants enter the field for the prize, each of whom is nominated in laudatory speeches. The nominations having been closed, the roll of the States is again called, and the chairman of each delegation announces its vote. If any man receives a majority vote — or a two thirds vote in the

Nominations.

Balloting.

Democratic convention — one of the defeated candidates immediately moves that the nomination be made unanimous. This is almost invariably done. Usually several ballots are taken, and at times the voting is very much prolonged, as in the Whig convention of 1852, in which fifty-three ballots were necessary, or in the Republican convention of 1880, which nominated James A. Garfield on the thirty-sixth ballot. Occasionally, on the other hand, candidates are nominated by acclamation without going through the customary forms.

Selecting a vice-presidential candidate.

After selecting the candidate for President, the convention proceeds to choose a nominee for Vice-president. As the position is one of more honor than power, it is not often desired by men of the greatest ability. It is usually given to a leader of some minor faction of the party, or to a politician whose State is located some distance from that of the presidential nominee. In either case it would give strength to the "ticket." Unsuccessful candidates for the presidential nomination are rarely or never chosen.

Constitutional qualifications.

361. The Qualifications of Candidates. — There are two classes of qualifications required of every candidate nominated for the presidency: the first constitutional, the second practical. (1) The Constitution does not allow any person to hold the office of President or Vice-president, unless he is a native-born American at least thirty-five years of age, and has been a resident within the United States fourteen years. The two officials must also be citizens of different States. (2) The convention, while not ignoring these qualifications, pays much more attention to the availability of a candidate, selecting the man who will be most likely to win. On this account, statesmen whose long public service may have been of great value, but who have made enemies, are obliged to give place to newer men

Constitution, Art. II, § 1, cl. 4.

Practical qualifications.

whose careers are less well known, and, therefore, less subject to attack. Candidates have in fact been selected chiefly because they stood the best chance of carrying some doubtful State, so that frequently considerations which should be of minor importance play a great part in the nomination. Whenever a convention fails to select a candidate at first, the coveted honor frequently goes to some one who had scarcely been mentioned for the place — to a "dark horse," as such an eleventh-hour candidate is called.

Work of party committees.

362. The Campaign. — After the candidates for the presidency have been notified of their nomination, and have sent in their letters of acceptance defining their position upon public questions, the campaign may be said to have begun. Its close is marked only by the November election, interest and excitement constantly growing until the result is known. During these three or four months business becomes less active and each party organizes its forces as carefully as possible. The great burden of the campaign is borne by the permanent committee of the political parties which form campaign clubs, collect funds, hold mass meetings and distribute an immense amount of partisan literature, supplementing this with active personal work among the doubtful voters.

Number and selection.

363. The Choosing of Presidential Electors. — On the Tuesday after the first Monday of November in each leap year, the voters go to the polls and cast their ballots, not for the candidates for President and Vice-president, but for "electors" who will later vote for these persons. Each State is entitled to as many electors in the "college" which elects the President as it has senators and representatives in Congress. Each party has accordingly selected the requisite number of electors and has placed their names upon the official ballot (§ 25). As a matter of course, all voters will

vote "straight" tickets, that is, for the electors of one party only, but, as accidents will happen, the total vote for the different electors of any party is never exactly the same. In consequence, if the vote of a State is about equally divided between two parties, some electors of one may be chosen with those of the other. For example, if there are twelve electors from the State in the "college," the twelve electors who receive the greatest number of votes are chosen whether they all belong to one party or not.

How they may be chosen.

As there is no national suffrage law persons can vote in some States who would not be allowed to do so in others. In fact, there is nothing in the United States Constitution to prevent a State's leaving the appointment of its electors to the legislature, as all of them formerly did. Or two electors at large may be chosen from the whole State, while the others are elected in the different congressional districts. It is well to bear in mind, however, that at present custom and public opinion make popular election compulsory, and that the United States Constitution by the fifteenth amendment does not permit a State to abridge the right of citizens of the United States to vote on account of race, color, or previous condition of servitude.

Casting and counting the ballots.

Constitution, Art. II, § 1, cl. 2, Amend. XII.

364. The Work of the Electoral College. — The actual election of the President and Vice-president occurs on the second Monday in the January following a "presidential election." On that day the electors who were chosen in November, meet at their respective state capitals, and vote for the candidates of the party which they represent. A certified copy of these electoral votes is forwarded by mail, and another by messenger, to the president of the Senate, who opens these ballots before the assembled senators and representatives on the second Wednesday of February. The announcement on this occasion definitely concludes the

election of the President, unless no one has received a majority of all the electoral votes.

The result in one very interesting and exciting election, that of 1876–1877, hinged upon the counting of several disputed electoral votes. The Republican candidates, Hayes and Wheeler, had 185 votes, 21 of which were contested, while the Democratic nominees, Tilden and Hendricks, received 184, none of which were in doubt. The 21 Democratic electors who claimed to have been chosen, insisted upon voting for their party's candidates, and the delicate question of which ones had actually been elected was at last referred to an Electoral Commission of five senators, five representatives, and five justices of the Supreme Court. The decision of this commission giving Hayes and Wheeler all 21 of the votes in dispute was accepted as final by both candidates and the parties they represented.

The disputed election of 1876.

In 1887, Congress passed the Electoral Count Bill, which provides that when two sets of electoral votes are cast in any State, the set shall be counted which bears the signature of the state executive or which has been declared legal by the state courts.

The Electoral Count Bill.

365. Election by the House of Representatives. — When the electoral college fails to choose the President, the House of Representatives proceeds to elect one from the three candidates who stood highest on the list of the electors. The vote is then taken by States, each State having one vote, but members must be present from two thirds of the States, and a majority of all the States is necessary to a choice. The failure of the college to elect a Vice-president leaves the selection of that official with the Senate. From the two candidates who have the greatest number of electoral votes, one is chosen by a majority of all the senators, at least two thirds being present.

Extra election of President and Vice-president.

Constitution, Amend. XII.

Election of 1800.

In the election of 1800 the electors did not designate whether the candidates voted for were nominees for the presidency or vice-presidency; they merely cast two ballots. As Jefferson and Burr each had seventy-three votes, the House was obliged to select one of the two. The choice fell upon Jefferson only after thirty-six ballots, in 1804. The twelfth amendment was adopted, which changed the method in certain particulars, and made it necessary for the electors to designate the office of each candidate.

Election of 1824.

In the election of 1824, there were four men who received votes in the college. Jackson had ninety-nine, Adams eighty-four, Crawford forty-one, and Clay thirty-seven. The choice was limited to the first three, and as Clay held views similar to those of Adams, by combining the votes of their followers Adams was elected by the House without difficulty. It will easily be perceived that the failure of the college to elect cannot recur under the present Constitution, unless there are more than two great parties or during the reorganization of parties.

First method of electing the President.

The Constitutional Convention, after considering many ways of selecting the President, finally decided to leave the choice with electors chosen by the States in the way prescribed by each. These electors as stated above were equal in number to the representatives and senators from the States, and were, at the first, usually themselves elected by the state legislatures. It was the intention to name the best men possible, and permit them to use their own judgment in the selection of the executive. Even before 1801, the electors had become a mere cog in the political machine, registering the popular will.

The Presidential Office

Oath of office.

366. The Inauguration of a President occurs on the fourth of March following his election. It is one of the most prominent social events connected with the life of the

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INAUGURATION OF A PRESIDENT.

(Chief Justice Fuller administering the oath of office to President-elect McKinley, March 4, 1897.)

Nation. The ceremony is quite impressive, and always attracts large numbers of strangers. Before an immense throng the oath of office is administered by the Chief Justice of the Supreme Court. It is in this form: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States." This is immediately followed by the inaugural address, a popular speech, which with notable exceptions has exercised little influence on the course of events.

Constitution, Art. II, § 1, cl. 7.

Inaugural address.

367. Term and Compensation of the President. — It was only after a great deal of discussion and many changes that the convention of 1787 finally selected four years as the term of office. As nothing was said about reëligibility, it remained for custom to place a fixed limit upon the number of terms possible for any one man. It would have been easy for either Washington or Jefferson to have been chosen a third time, but each preferred the seclusion of private life. Later Presidents did not wish to alter the rule; and since the futile attempt made by Grant's adherents to nominate him a third time (1880), it has become a practical impossibility for any one to break the "third term tradition."

"Third term tradition."

Constitution, Art. II, § 1, cl. 1.

There has recently been quite a little discussion about altering the term of office, going back to the six or seven years preferred by the convention at first, and not allowing the President to be reëlected. The reasons for this suggestion are found in the objections to the exciting campaign every four years, and to the bad effect which a desire to remain in office has upon a President's policy during the last two years of the first term. There can be no doubt that these objections are well grounded. Yet there is much to be said on the other side. Four years have been all too long

A six-year term.

for some of the Presidents we have had. Six years would mean no reëligibility, so that a satisfactory President could not be retained. Or if he might be elected again, he would have a stronger hold upon the patronage, which always plays a part in elections, and would pander still more to popular prejudice, as reëlection would be more difficult if the term were six years.

Salary of the President.

The salary of the President was at first twenty-five thousand dollars a year. In 1873 it was raised to fifty thousand dollars. In addition, the executive mansion known as the White House is placed at the disposal of the President, and the government pays most of the expenses incurred in the performance of diplomatic and social duties, aggregating about one hundred thousand dollars a year.

Constitution, Art. II, § 1, cl. 6.

Selection and duties.

368. The Vice-president. — In all the proceedings connected with the selection and installation of the President, the Vice-president plays a very minor rôle. Chosen for the votes he may control rather than the merits he possesses, he is destined to be quite as inconspicuous during his four years of office as he was during the months preceding the inauguration. He presides over the deliberations of the Senate, but he is not a member of that august assembly. He cannot appoint its committees, neither can he influence its actions except through the force of his personality. Were it not necessary to have some popular representative who may take the place of the President, if the presidency should become vacant for any reason, the Vice-president would be a very superfluous national official. But, as five Vice-presidents have been called upon to assume presidential duties, the value of the office is very apparent.

John Tyler became President in 1841 at the death of W. H. Harrison. Millard Fillmore in 1850 took Zachary Taylor's place, and

THE WHITE HOUSE.

Andrew Johnson, Chester A. Arthur, and Theodore Roosevelt were elevated to the presidency when Abraham Lincoln, James A. Garfield, and William McKinley were assassinated in 1865, 1881, and 1901 respectively.

369. The Presidential Succession. — In case both President and Vice-president die during the term for which they were elected, the office of President will be filled by the members of the Cabinet, in the following order: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-general, Postmaster-general, Secretary of the Navy, Secretary of the Interior. Previous to 1886, when the present law was passed, the president *pro tempore* of the Senate and the Speaker of the House would have succeeded to the presidency had that office become vacant. The chief objection to the older law was the possibility of having as President a man whose policy was the exact opposite of the former chief executive.

Order in the Cabinet.

Constitution, Art. II, § 1, cl. 5.

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James and Sanford, *Government in State and Nation*, pp. 248–270.

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393; Cox, *Three Decades of Federal Legislation*, pp. 651–668; Blaine, *Twenty Years of Congress*, II, pp. 582–589; W. H. Northrup, in *Century*, LXII (1901), pp. 923–934.

Studies

1. Discussions of the presidency in the Constitutional Convention. Fiske, *Critical Period*, pp. 277–285.

2. The third term tradition. McMaster, *With the Fathers*, pp. 55–70.

3. Method used in nominating and electing Presidents. Bryce, *The American Commonwealth*, third regular ed., II, pp. 185–212.

4. The life of the President. Harrison, *This Country of Ours*, pp. 159–180.

5. Should the President's salary be increased?

6. Should the vice-presidency be abolished, or should its powers be enlarged?

Practical Questions

1. During the last presidential campaign, what candidates were before the conventions? How many ballots were taken at each convention? Was there any dispute over any plank of the platform? If so, what one? Newspaper Almanacs for following year.

2. How many members of the "electoral college" are there? How many are necessary to a choice? How many electors has this State? How have they voted in recent elections? Appendix B.

3. Have we had any Presidents since the Civil War who received a minority of the popular vote? What Presidents have been chosen west of the Mississippi? What States have had the greatest number? Newspaper Almanacs.

CHAPTER XXX

POWERS AND DUTIES OF THE PRESIDENT

Constitutional powers.

370. The Great Power of the President comes from two sources. First, the Constitution assigns to the President duties of magnitude in authorizing him to execute the laws, in addition to directly conferring powers connected with legislation, military affairs and foreign relations that would of necessity make him a powerful official. Second, all officials belonging to the executive branch of the national government are directly or indirectly responsible to the President. They are appointed by him or by some of his immediate subordinates, and may be removed if they fail to carry out his policy. The importance and the value of this concentration of executive and administrative authority in the hands of the President, can be better appreciated if we compare him with the state governor. The latter, as we saw (§§ 165–166), has many powers granted him by the constitution of his State, but, because of his inability to control more than a small proportion of the officials who carry out state laws, has never been able to make the state executive department coördinate with the legislature.

Administrative centralization.

Executive and Military Powers

By peaceful and military means.

371. The Execution of Law is ordinarily a peaceful process in which the executive officers deal directly with indi-

viduals. Occasionally persons may break a national law, or openly resist the execution of a particular act. It is then necessary for the executive officials to arrest the offenders, and secure their conviction by the courts and subsequent punishment. If the resistance is active and widespread, the President may find it necessary to use the regular army or the militia to suppress riots. This can be done very effectually, because he is both the chief executive and the commander-in-chief of the army. On several occasions the regular troops have been called out for the protection of the mails. Especially during the great railway strikes of 1877 and 1894, the arrival of the United States troops at the scene of disorder had a very wholesome effect upon the rioters, with whom in some instances the local authorities were unable to cope successfully.

Constitution, Art. II, § 2, cl. 1.

The President may direct the movements of the army in order to protect any State from invasion, or from domestic violence on application of a state legislature or executive.

Great power in time of war.

372. The Real Military Power of the President can be exercised only in case of actual war. Theoretically an army can be raised and war actually declared by Congress alone (§ 301), but the President as military commander may really begin war, and Congress will then have no alternative but to vote men and money for carrying it on, or risk loss of national prestige by an unseemly withdrawal from hostilities. In the prosecution of a war a President may continue to increase his power until within vast territories there is no government except that under martial law. During the Civil War, for example, the President, by virtue of his position as military commander, suspended the privilege of the writ of *habeas corpus* in a large part of the North, and issued the Emancipation Proclamation, freeing the slaves in the States then in insurrection. During that struggle, ac-

cording to Mr. James Bryce, "Abraham Lincoln wielded more authority than any single Englishman has done since Oliver Cromwell."

Appointment and Removal

373. The Power of Appointment. — The President has the right to appoint "with the advice and consent of the Senate" all ministers to foreign countries, consuls, national judges, and all other United States officials and employees whose appointment is not left to heads of departments or the Civil Service Commission. As a matter of fact, the President names persons for only the most important positions, including those abroad, the chief places in Washington, collectorships throughout the United States, and first, second, and third class postmasterships — in all something over five thousand offices. This power of appointment is one of the most valuable given the President, although it undoubtedly causes him very great annoyance. The throngs of office seekers have made the life of many a President a burden, and an unwise or unpopular appointment often alienates large numbers of a President's supporters.

Presidential offices.

Constitution, Art. II, § 2, cl. 2.

The practical working of the system leaves the President most of the discomforts, with only a fair share of the benefits, that accompany the right to select subordinates. This is caused by the necessity of consulting the Senate in making appointments. The senators belonging to the same party as the President insist that their wishes be respected when any appointments are made to offices situated within their States. If the President does not nominate the man selected by a senator or choose one from two or three whom the senator names, his appointment is likely to be rejected in executive session. Appointments of this character are in

Practical working of the system.

reality made not so much with the consent of the Senate as upon its advice. The President is really free to consult his own wishes in making but a small proportion of his appointments, the chief of which are to cabinet positions and foreign offices. Whenever a nomination is ratified, moreover, it is said to be done through the "courtesy of the Senate," as the Senate might easily have refused its sanction. The term "senatorial courtesy" is therefore given to the general system of appointment, which, it can readily be seen, leaves to the Senate the lion's share of national patronage.

Spoils system.

374. Minor Appointments were formerly left entirely to the heads of bureaus or departments, who were in turn appointees of the President. Because of the custom of changing the personnel in the ranks of minor officials and employees with every change of administration, the national civil service was composed of incompetent persons, who obtained their positions in return for partisan favors. For over half a century the hold of the "spoils system" upon the civil service had been growing constantly stronger until Congress, in 1883, provided for a Civil Service Commission of three members, not more than two of whom shall belong to the same political party. These commissioners are appointed by the President and Senate, and at first had power to examine candidates and make appointments to only a few positions. The number of places filled in this way has been increased so rapidly that in 1902, 121,000 of the 235,000 positions under the national government were filled by the Commission, and 109,000 only after examination. Of the remainder, sixty per cent are fourth-class postmasters, chosen by the fourth Postmaster-general.

Civil Service Commission.

Historical changes.

375. The Power of Removal. — The Constitution does not state how removals shall be made, but by custom it is now left exclusively with the President, although for twenty

years officials could be removed only with the consent of the Senate. Having so much influence in appointments, the Senate would naturally wish to be consulted in removals as well. The First Congress, however, passed a resolution which declared that the President was not obliged to obtain the consent of the Senate. This practice remained unchanged until, in 1867, Congress passed the famous Tenure of Office Act, requiring the indorsement of the Senate for both removals and appointments. In 1887 this law was repealed and the power again given to the President alone. When an official resigns or is removed during a recess of the Senate, his successor may hold office without confirmation until the close of the next session of Congress.

Foreign Affairs

The making of treaties.

Constitution, Art. II, § 2, cl. 2.

376. The Negotiation of Treaties.—The foreign policy of the United States depends to a very great extent upon the wishes of the President, although he does all of his business with other nations through the Department of State, and is compelled to obtain the consent of two thirds of the senators before any treaty will take effect.

Process in time of peace.

The actual negotiation of a treaty between the United States and a foreign power is conducted by the Secretary of State (§ 387), or by our ambassador at the capital of the nation interested. When the details are arranged in this country, the foreign minister, after receiving general instructions from his home government, confers with the Secretary of State. The Secretary in turn communicates with the President on all important topics. When the negotiations are conducted abroad, our ambassador is informed by the Secretary of State concerning our demands. In either case, the treaty will be signed by the principals who have been

actively engaged upon it, and will then be sent to the Senate for ratification.

Peace treaties.

The provisions of treaties of peace at the close of international hostilities are usually arranged at the capital of some neutral nation, both contestants being represented by special envoys plenipotentiary, but protocols may be arranged, as at the end of the Spanish-American War in 1898, through the ambassador of some neutral power.

President and the Committee on Foreign Relations.

377. Ratification of Treaties. — In order that a treaty may not be rejected by the Senate, the executive department is accustomed to consult the leaders of the Senate Committee on Foreign Relations. This is done partly for the reason that these leaders know the feelings of their colleagues regarding foreign affairs, and partly because they have served the Senate so long on this committee that their judgment and opinion becomes of great value.

Power of Senate in treaty making.

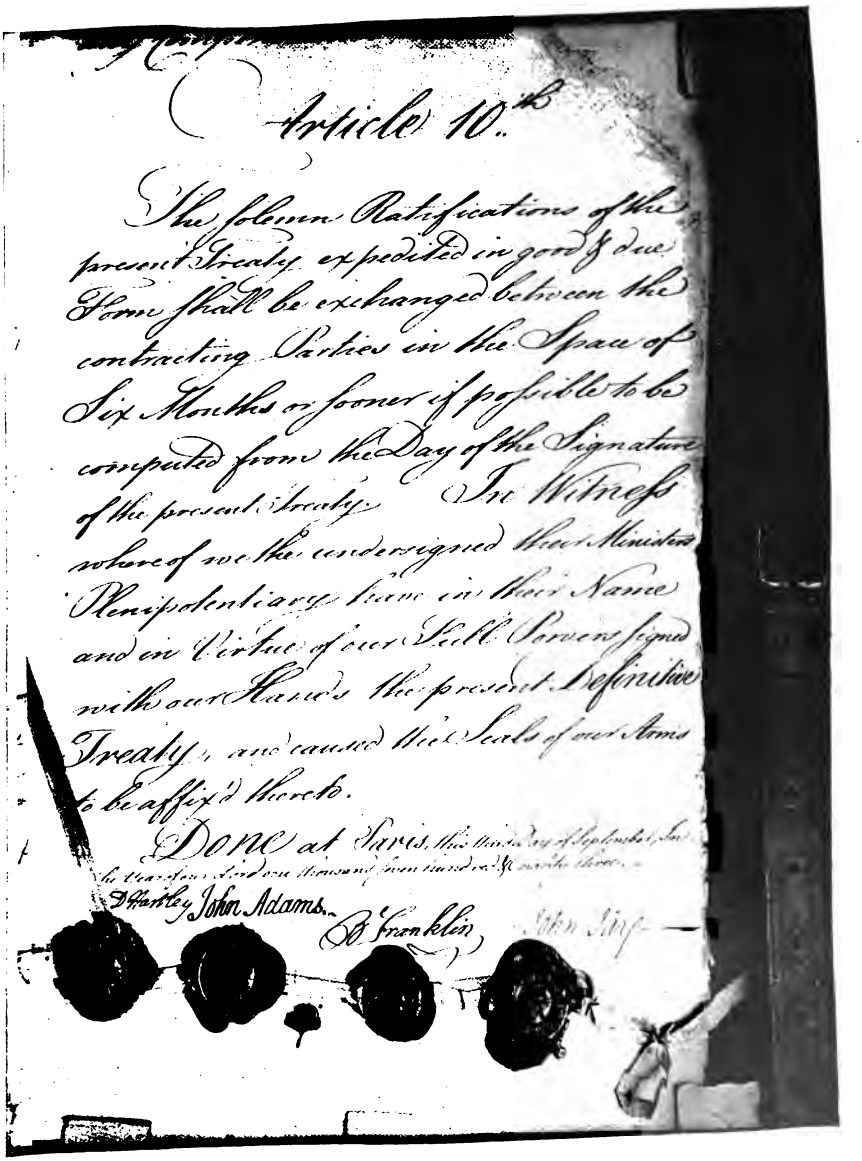
The Senate never hesitates to reject the whole or parts of a treaty or to amend any section. If the change is relatively unimportant, the Department of State can usually obtain the consent of the foreign government to it; otherwise, negotiations are broken off altogether, or are begun again as for an entirely new treaty.

The House and treaties.

Although treaties are made without consulting the House of Representatives, they are as much a part of the supreme law of the United States as statutes passed by Congress. A treaty supersedes a previously existing statute with which it is in conflict, although it may in turn be abrogated by a later law. If a treaty deals at all with questions of finance, the injustice of not consulting the House is evident, and the more popular chamber has more than once refused to grant appropriations to carry such a treaty into effect.

Acquisition of territory.

378. Other Foreign Affairs. — Many Presidents, through the exercise of the right to make treaties, have won fame for



Article 10th.

The solemn Ratifications of the present Treaty expedited in good & due Form shall be exchanged between the contracting Parties in the Space of Six Months or sooner if possible to be computed from the Day of the Signature of the present Treaty. In Witness whereof we the undersigned their Ministers Plenipotentiary have in their Name and in Virtue of our Full Powers signed with our Hands the present Definitive Treaty, and caused the Seals of our Arms to be affixed thereto.

Done at Paris, this third day of September, in the Year of our Lord one thousand seven hundred & eighty three.

D Hartley John Adams. B Franklin John Jay

THE TREATY OF 1783 (CLOSING PAGE).

themselves, and given opportunity for national development, by acquiring new territory. This expansion has added greatly to the power of the presidency, not only through the prestige gained by acts of such far-reaching importance, but on account of the increased use of executive authority made necessary in governing the new territories (§ 290).

Sending, receiving, and dismissing ambassadors.

The President has the right to send or receive ambassadors, and to dismiss them. The reception of a minister from one of the great powers is an affair of great formality, whereas the reception of a representative from a new nation is a matter of equal importance, inasmuch as the reception of a minister is equivalent to the recognition of the independence of the State which sends him. The President has, therefore, the right to recognize the international standing of any former colony, and to decide which of the two governments of a country in insurrection shall be considered the government *de facto*. He may ask to have a minister withdrawn, if he has become *persona non grata* to the administration for any good and sufficient reason. At the beginning of hostilities with a foreign nation, unless the minister asks for his papers, his passports will be sent to him, this act being virtually a declaration of war.

A rule for executive action.

379. The Monroe Doctrine. — The messages of several Presidents have been the means of announcing new foreign policies, which have been reaffirmed by subsequent administrations. President Monroe's regular message of December 1823 and President Cleveland's special message dealing with the Venezuela controversy, have clearly defined the attitude of the United States toward the nations of the old world in their dealings with those of the new. It is well to bear in mind that the Monroe Doctrine, which is recognized and respected almost as a part of international

law, is nothing more than the policy of the executive department consistently followed for three generations.

The original Monroe Doctrine.

The original Monroe Doctrine consisted of two declarations. The first was called forth by the offer of Russia to arrange the rights and interests of the two nations in the northwest part of the continent. The message of President Monroe stated "that the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European powers."

The second was produced by the proposal of the Holy Alliance[1] to reconquer for Spain the colonies in Southern America which had established their independence. The stand taken in the message on this question is as follows. "We owe it, therefore, to candor, and to amicable relations existing between the United States and those powers [Spain and her allies], to declare that we should consider any attempt on their part to extend their [monarchical] system to any portion of this hemisphere, as dangerous to our peace and safety. With the existing colonies or dependencies of any European power, we have not interfered, and shall not interfere. But with the governments who have declared their independence, and maintained it, and whose independence we have, on great consideration, and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling, in any other manner, their destiny, by any European power, in any other light than as a manifestation of an unfriendly disposition toward the United States."

Legislative and Judicial Powers

380. Direct Control over Congress. — The President may exert a very powerful influence upon the actions of Congress through his right to veto bills, to call special sessions, and to adjourn Congress when the houses fail to agree upon a date. Sometimes he also succeeds in persuading the national legislature to carry out his policy by sending regular and special messages.

[1] The Holy Alliance was formed by Russia, Austria, and Prussia in 1815 for the purpose of suppressing republican doctrines in Europe. Other countries were afterward joined to the Alliance.

Special sessions of one or both houses can be called by the President alone. The Senate is ordinarily convened without the House immediately after an inauguration to consider appointments made by the new chief executive. Extra sessions of Congress have been held most commonly to act upon financial measures, the consideration of which could not be postponed with impunity. **Sessions.**

The President's right to veto bills (§ 332) gives him more influence over Congress than any of his other legislative powers. Most Presidents have, however, used the veto sparingly, and some not at all. The proportion of bills passed over vetoes has been remarkably small, for the congressmen have rarely failed to be impressed by the reasons given for executive disapproval, and a two thirds majority can be obtained only under exceptional circumstances. **Veto power.**

381. Presidential Messages. — The President's annual message is always sent to Congress the first week of each session. It is usually little more than a summary of the work of each of the executive departments, with some suggestions on that work. Occasionally a large part of the message is taken up with the formulation and statement of some policy; but this is not common, as the message nowadays exerts but little influence on the course of legislation. **The annual message.** **Constitution, Art. II, § 3.**

Special messages are often sent. If these relate to some subject of great popular interest, their influence upon legislation is marked and immediate. *E.g.* when President McKinley asked for money to render the army and the navy more efficient, in the spring of 1898, before war with Spain had been declared, both houses passed the bill by almost unanimous votes, and the House within a space of two hours. But with special messages, it is the pressure of public opinion, rather than the power of the President, that leads to favorable action. When the Presidents were **Special messages.**

in close touch with Congress, the message had an importance that it now lacks, and the houses often spent considerable time in "Committee of the Whole on the state of the Union" considering the policy of the President.

Extent of the power.

Constitution, Art. II, § 2, cl. 1.

382. Reprieves and Pardons. — Persons who have broken national laws and been convicted, may have their sentences temporarily suspended, *i.e.* they may be reprieved, by the President. He may grant pardons as well, except in cases of impeachment.

Use of the power.

The power has been used most extensively in granting amnesties to persons who have taken part in insurrections against the United States. Otherwise, it does not possess the significance that attaches to the pardon of the state governors (§ 169), because offenses against national law are much less numerous than those committed under state laws.

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THE SPOILS SYSTEM AND CIVIL SERVICE REFORM: D. B. Eaton, in Lalor's *Cyclopædia*, on "Civil Service Reform"; Lodge, *Historical and Political Essays*, pp. 114–137, and in *Century*, XL (1890), pp. 837–844; T. Roosevelt, in *Century*, XXXIX (1890), pp. 628–633, in *Scribner's Magazine*, XVIII (1895), pp. 238–247, and in *Atlantic Monthly*, LXXV (1895), pp. 239–246; W. G. Rice, in *North American Review*, 161 (1895), pp. 602–611; H. T. Newcomb, in *North American Review*, 166 (1898), pp. 196–206; H. L. Nelson, in *Forum*, XXX (1901), pp. 608–619.

THE MONROE DOCTRINE: Curtis, *United States and Foreign Powers*, pp. 93–106; Foster, *Century of American Diplomacy*, pp. 438–478;

Latané, *United States and Spanish America*, pp. 266–289; McMaster, *With the Fathers*, pp. 1–54.

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1. The ordinary execution of law. Harrison, *This Country of Ours*, pp. 113–118.
2. Military power of the President. J. B. Schouler, in *Forum*, XXIII (1897), pp. 70–74.
3. The question of removals (historical). G. Cleveland, in *Atlantic Monthly*, LXXXV (1900), pp. 726–732.
4. The Senate and the President. Harrison, *This Country of Ours*, pp. 99–104, 107–110, 134–141.
5. The pardoning power. Harrison, *ibid.*, pp. 142–148.

Practical Questions

1. What persons connected with the postal service are selected by the President and Senate; by the fourth postmaster-general; by the Civil Service Commission?
2. What important treaties have been negotiated the past year or two? Were they ratified at once by the Senate?
3. What President has vetoed the most bills? Which one has had the largest number of important ones passed over his veto? Name any recent use of the veto.
4. Look up the last presidential message. To what topics is most space given? What policies are suggested? Have any of these suggestions been incorporated into law?

CHAPTER XXXI

THE EXECUTIVE DEPARTMENTS (I)

THE PRESIDENT'S CABINET

The executive departments.

383. Introductory. — Although the power of our national executive belongs almost exclusively to the President, the administration of its business remains with the different executive departments. At present there are nine of these, the Departments of State, the Treasury, War, Navy, Post Office, Interior, Justice, Agriculture, and Commerce. The heads of these departments, usually called secretaries,[1] are selected by the President and are personally responsible to him. Collectively they form an advisory body called the Cabinet, which assists him in forming and executing any policy in which the entire administration is interested. All questions of moment are discussed in cabinet meetings, held at the White House twice a week, but the President is in no wise bound to follow the advice of his Cabinet, and may act in opposition to the wishes of all the secretaries. Much more frequently, of course, the President and his associates hold identical views upon public questions, yet we must not forget that in the last analysis the policy of an administration is the policy of the President and not that of the Cabinet.

The Cabinet.

Selection of cabinet officers.

Formerly, unsuccessful candidates for the presidency were often chosen for cabinet positions. *E.g.* President Lincoln appointed Wil-

[1] The heads of the Departments of Justice and the Post Office are known as the Attorney-general and the Postmaster-general.

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A CABINET MEETING.

(President McKinley and Cabinet, 1898.)

liam H. Seward, Salmon P. Chase, and Simon Cameron, all of whom had been political rivals, to the three most important positions in his Cabinet. This custom has fallen into disuse, and recent Presidents, have usually selected business men for the business departments, and prominent lawyers, who may have taken no active part in politics, for the other positions. The newer practice has given satisfaction, for the administrative work of the executive departments was never more effectively performed than it is to-day. For these positions, the compensation is very inadequate, being but eight thousand dollars per year.

Relation of their duties.

384. Executive and Legislative. — In considering the powers of Congress, we noticed how closely the administration of law is related to legislation.[1] In fact, a task which in one case is performed by Congress may be left in another to cabinet officers, who prescribe the work to be done and the methods to be employed. This interrelation of legislative and executive duties has produced in England and some other European countries a more or less complete union of these branches of government. In Great Britain, for example, the executive department is the Cabinet, which is in reality a committee of Parliament. This Cabinet not only carries out the laws passed by Parliament, but it introduces all important bills. Moreover, when its policy is no longer approved by the House of Commons, the more powerful chamber, the Cabinet is obliged to resign or call a new election for members of Parliament. This system insures responsibility and prevents unnecessary friction between the legislative and executive departments. For these reasons it has been highly recommended as suitable for this country, although our preference for a separation of the three great departments of government makes its adoption unlikely, and, in the opinion of most statesmen and students, unwise. The very separation of the departments is usually considered one of the wisest political devices

Union of the two in Great Britain.

[1] Consult especially §§ 268–271, 281, 290, 297–300, 302, 303, 315.

adopted by our forefathers, and, although it has given us perhaps a less efficient government than that of England, it has probably been the safest and most satisfactory government we could have had.

Control of Congress over departments.

385. Congress and the Executive Departments.—The actual working relations of Congress and the departments are comparatively simple and satisfactory. Congress organizes and has general oversight of the departments and their bureaus, while the secretaries are given a considerable amount of discretion in applying the laws whose administration belongs to them. Congress may hamper the work of any department, however, by a failure to make needed reforms or vote sufficient money. In each house there are appropriation committees, whose especial duty is to examine the estimates sent in by the departments which they supervise. These committees in a sense form a connecting link between the departments and Congress. To a large degree harmonious relations between the houses and the executive officials depend upon them, for they may prevent successful administration or required improvements.

Influence of secretaries over Congress.

The secretaries can influence Congress through their annual reports, and by personal appeals to leaders and to the chairmen of the committees which look after their departments. It has been proposed that members of the Cabinet should be given seats in Congress with the right of speaking though not of voting, but the suggestion has not met with favor. Nevertheless, the heads of the executive departments have exerted a marked influence upon the important laws relating to their departments. For instance, during recent years the Secretary of War has been able to obtain colonial and military legislation that has followed the suggestions of his annual report to quite an extent, and the Secretary of the Treasury has many times possessed a similar influence (§ 390).

A great deal of discretion is permitted by Congress or exercised by a determined secretary in administering the work assigned his department. This is especially noticeable with the Secretaries of State, who must of necessity be allowed freedom in negotiating treaties, the Secretary of the Treasury (§§ 390, 391), the Secretaries of War and the Navy in managing the army and navy, the Secretary of the Interior (§ 298), and the Postmaster-general (§ 394). In coöperation with the President, the secretaries might even carry into effect a policy that is opposed by Congress.

Discretionary power of the secretaries.

386. The President and the Heads of Departments. — The control of most of the administrative duties belonging to each department is of necessity left entirely with its secretary, because they deal largely with matters of detail. The President naturally insists that his wishes shall be followed in regard to all subjects of importance, in order to preserve the unity of action necessary to a successful administration of public affairs. In minor matters, he is likely to yield to the preference of the secretary, if there is any difference of opinion between them. "The habit is to give an afternoon to each cabinet officer on a fixed day of the week. These meetings are mainly given up to the consideration of appointments, but, if any other matters are pending, and deemed by the secretary of sufficient importance, they are presented and discussed. The cabinet officer is chiefly entitled to the credit if his department is well administered, for most things he transacts on his own responsibility. His labors are incessant and full of care."[1]

Action on important and unimportant subjects.

The departments were organized in the following order: —

The Department of State, July 27, 1789,
The Department of the Treasury, Sept. 2, 1789,

[1] Harrison, *This Country of Ours*, p. 107.

The War Department, Aug. 7, 1789,
The Post Office Department, May 8, 1794,
The Navy Department, April 30, 1798,
The Interior Department, March 3, 1849,
The Department of Justice, June 22, 1870,[1]
The Department of Agriculture, Feb. 9, 1889,
The Department of Commerce and Labor, Feb. 14, 1903.

The Department of State[2]

Foreign affairs.

387. The Duties of the Secretaries of State.—The Secretary of State occupies a position of especial honor as the chief secretary and as the member of the Cabinet who comes first in the succession to the presidency. His principal duties relate to the negotiation of treaties (§ 376), which are left almost exclusively in his charge. His foreign policy is likely to become that of the President, and the success of the government in its dealings with other nations depends to a large degree upon his wisdom and skill. Newly appointed foreign representatives are met by the Secretary of State and presented by him to the President, all business with them being done through him. But his time and that of his associates is devoted to many matters of routine. The entire consular system is under his supervision. He is intrusted with keeping the laws of the United States, sending certified copies of all as they are enacted to the governors of the States. He affixes the

Domestic duties.

[1] There has been an Attorney-general since 1789.

[2] In order to understand and fully appreciate the important work done by the different executive departments, we should review all sections in other parts of the book where various administrative duties have been described. These have been considered in other connections in order to treat the whole of one subject in one place so far as possible.

The pupil should study the organization of the different departments and compare the coördination of business in the Treasury Department for example with the lack of coöperation in the Navy Department. For lists of the bureaus and the duties performed by each, consult the *Congressional Directory*.

great seal to civil commissions of officers appointed by the President, issues proclamations when amendments to the Constitution are adopted, and often drafts the Thanksgiving and other proclamations of the President.

Diplomats: duties, qualifications, and appointment.

388. The Diplomatic Service. — Our business of a diplomatic nature which is not transacted in Washington, is intrusted to representatives at the capitals of all important countries. To seven of these is given the title of ambassador, while the others are usually known as ministers. Their actual duties are more often social than diplomatic, for the tasks of negotiating treaties and caring for other national relations are not arduous under ordinary circumstances. These positions can be properly filled only by men with talent of a high order, broad-minded, tactful men, thoroughly familiar with the events of recent history, and quick to notice little changes in the feelings of a people. Our custom has always been to appoint party men, whose tenure has been insecure, but who fortunately are aided by fairly permanent assistants and secretaries of legations. We have nevertheless been represented abroad by some of the ablest and most scholarly men America has produced, notwithstanding the inadequate salaries that are given even ambassadors.

Salaries.

The highest salary paid an ambassador is $17,500. The lowest given a minister is $5000, the average salary being about twice the latter figure. As the United States does not own buildings in the foreign capitals and social demands make numerous inroads upon a minister's purse, only men of independent means can afford to accept diplomatic positions.

Classes of consuls.

389. The Consular Service. — The consuls are business agents of the United States residing in all important cities on the globe. There are several classes of which three are important. First, there are the consuls-general, who are

assigned to the largest cities, and have general supervision of the consuls near them, besides special charge of their own districts. The second class includes the ordinary consuls, who devote all of their time to the duties of their positions, and the third is made up of residents in small cities, who look after American interests while continuing their regular business.

Duties. Consuls are obliged to report to the Department of State, giving information concerning the amount of foreign commerce within their districts, including the character of the imports and the destination of the exports. They look after American merchants abroad who may need their services, take charge of invoices of goods shipped to the United States, aid travelers, and send special reports on subjects which any American citizen wishes to investigate. Among semi-barbarous peoples, cases affecting citizens of the United States are tried in consular courts, because of the imperfect administration of justice in those of the country.

Selection. We have been accustomed to change all consuls and consuls-general with the incoming of an administration in Washington. This has, of course, injured the service. The best of men cannot do satisfactory work for the first year or two in a position where the language and conditions are entirely unknown, and, when the tenure is brief, because a consulship is given solely as a reward for partisan favors, the result is disastrous. The reform of the worst evils of the present consular system will undoubtedly be accomplished within a few years.

The Treasury Department

Political influence. **390. The Secretary of the Treasury** has exercised an influence second to that of no other cabinet officer. His public

duties are not only numerous but important, and so high has been the standing of the men who have held the position, that suggestions made by the secretaries have usually been followed by Congress. The financial policy of the United States was, in fact, proposed and has been perfected by these leaders rather than by congressmen. During Washington's administration, Secretary Hamilton's suggestions regarding the different sources of revenue and the methods to be used in collecting or disbursing money were accepted with comparatively little change. While no later secretary has so completely molded Congress to his own views, many have been able to carry out their plans, as in the creation of a national banking system (§ 277).

Discretionary power.

The discretion which a secretary is allowed to use in the management of the finances gives him a considerable degree of authority. He may also influence Congress greatly at present through the suggestions made in his annual report for the improvement of the revenue system, the support of the public credit, or the adoption of more satisfactory methods. This influence is increased through the letter which he submits to Congress (§ 356), giving his estimate of the receipts and expenditures for the following year.

Organization of the department.

391. Administrative Duties of the Secretary. — The Secretary of the Treasury is the head of a very large organization, which employs more than twenty thousand men in the performance of a great variety of useful and responsible duties. The supervision of this army of workers, and the general oversight of the receipt and disbursement of public moneys amounting to fifteen hundred millions of dollars a year, is itself no mean task.

Selection of officials and employees.

The numerous minor Treasury officials are chosen by the President after consulting the Secretary, or by the Secretary and his immediate subordinates, most of the employees

in the department being appointed by the Civil Service Commission. Among the duties left especially with the Secretary are those relating to the collection of the customs, which by law are under his immediate supervision. To aid him in his work, he has three assistant secretaries, besides the chiefs of the different bureaus and divisions.

Collection.

392. The Collection and Disbursement of Money. — As we noticed in §§ 270, 271, most of the revenue of the government is obtained through the collectors of customs and internal revenue, the latter being under the control of the Commissioner of Internal Revenue. The money which they receive is deposited at the treasury, the sub-treasuries, or in depositaries (national banks located at convenient points). It remains under the charge of the Treasurer of the United States, until paid out by him as directed by the Auditors. There are six Auditors at Washington, each of whom keeps track of the expenditures within the executive departments that may be assigned to him. To the Auditor for the Post Office Department, who maintains an office with over five hundred employees, are submitted the quarterly accounts of every postmaster in the United States. Demands for money are not paid until approved by the appropriate Auditor, and disputed claims are referred to the Controller of the Treasury, whose decision upon them is final. A complete list of the bonds that have been issued for money loaned to the government (§ 273) is kept by the Register of the Treasury, who looks after all new issues as well.

Accounting system.

Duties of officials and bureaus.

393. Making Coins and issuing Money. — All of the money now in use within the United States has been coined or issued under the direction of the Treasury Department. The Director of the Mint has general oversight of the assay offices at which gold bullion is tested, before it is sent to the mints where it is coined in accordance with his instruc-

tions (§ 276). The national banks of the country are in charge of the Controller of the Currency. He arranges for the organization of new banks, enforces compliance with the provisions of the banking law, examines reports, and appoints receivers for banks that fail. Owing to the excellence of the law and care with which the duties of this division are performed, failures rarely occur among national banks, and the notes which they issue circulate everywhere. These notes, as well as United States notes, bonds, certificates, and different kinds of postage stamps are printed by the Bureau of Engraving and Printing. To prevent counterfeiting, paper of a peculiar texture is used for all notes, and the greatest pains are taken by elaborate engraving, and by constant precautions during the process of printing, to avoid possible loss to the government.

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3. The Treasury Department. L. J. Gage, *Cosmopolitan*, XXV (1898), pp. 355–358, 365–371.

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Practical Questions

1. Name the members of the Cabinet at present. Who are the American ambassadors at foreign courts? Give some account of each of these men.

2. How does the pay of United States ministers and consuls compare with those of foreign countries?

3. What Secretaries of the Treasury have had a national and lasting reputation? What Secretaries of State or of the Treasury have become President? Newspaper Almanacs.

4. What are the duties of the consular bureau? of the Bureau of the International Union of American Republics? *Congressional Directory.*

CHAPTER XXXII

THE EXECUTIVE DEPARTMENTS (II)

Post Office Department

394. The Post Office as a Business Organization.—The post office is the only notable example of a business actually conducted by the national government. More than a hundred thousand persons are employed in gathering and distributing the mails, over seventy-five thousand post offices have been established, and about one hundred pieces of postal matter for every man, woman, and child in the United States are handled yearly. Unlike ordinary firms, the Post Office Department does not seek to make money, but gives the people the best service possible at less than cost, the deficit in 1902 being 3 million dollars in a total expenditure of 125 millions.

Amount of business done.

The postal system was under the control of the government even in colonial times, but the rates were exorbitant, and the methods in use very different from those of the present. Letters were often the only things carried, stamps were not used, and postage was not paid in advance. Until 1845, it cost twelve and one-half cents to send a letter one hundred miles, and twenty-five cents for any distance greater than four hundred fifty miles. After Sir Rowland Hill had demonstrated in England the advantages of adhesive stamps, and a reasonable rate, not dependent on the distance, we adopted in 1845 a modification of this plan. Charges have since been greatly lowered, the present rates having gone into effect October 1, 1883. The increase of business has certainly justified this last reduction, for the postal revenue is three times as great as it was twenty years ago, notwithstanding the proportionally larger business done for the same income, and the costly improvements that are constantly being made in the service.

History of the postal system.

Postmasters, clerks, and carriers.

395. Post Office Officials and Employees. — Post offices are divided into four classes, according to the amount of the business transacted. Postmasters are appointed by the President and Senate for the first three classes, but they number less than five thousand. The other seventy-two thousand postmasters, whose salaries are less than one thousand dollars each, are chosen by the Postmaster-general.[1] None of these officials are subject to civil service rules, and many are changed whenever a new administration is inaugurated at Washington. Most of the employees, including postal clerks, railway mail clerks, and mail carriers are appointed by the Civil Service Commission (§ 374), being continually reëxamined by inspectors to insure efficiency.

Mail routes and railway post offices.

396. Methods employed by the Postal Service. — In addition to the post offices maintained for the sale of stamps and money orders and the delivery of mail, postal routes have been established over which the mails are transported. Contracts are made for carrying the mail on these routes; with companies, for the routes most traveled, as on railways or large rivers, with individuals, in more isolated regions. Moreover, all other persons or corporations are forbidden to carry mail for a compensation over these routes, as the government retains a monopoly of the business. On all railways the mails are distributed by railway mail clerks at all hours of the day, in order to facilitate its delivery. This system is employed even on electric cars, which are used for collecting letters in cities.

Star routes.

The less important routes over which mail is not carried by railways or steamboats, are commonly called "star routes" because designated in the books of the department by stars. The contracts for transportation of the mail over these routes are given to the lowest bidders, usually non-residents of the section. At one time (1881), star routes

[1] This duty is assigned to the fourth assistant postmaster-general.

came prominently before the public because of corruption in awarding the contracts.

The United States is a member of the International Postal Union which was organized in 1891 for the purpose of establishing uniform rates upon all letters, periodicals, and books sent from one to another. These rates are now the same to nations not in the union. As no parcel's post was provided, special arrangements are made for carrying packages, Germany being the only European power to which they can be sent, but all other American nations include parcels with other mail. **International Postal Union.**

By a law enacted in 1866, the Post Office Department has authority to acquire the ownership and control of telegraph lines which it may need. This authority it has, of course, never exercised. **The telegraph.**

397. The Work performed by the Post Office includes not only the collection and distribution of the mails, but the issuance of money orders. Ordinary mail is divided into four classes. Letters are first-class matter; periodicals, second-class; books, third-class; and merchandise, fourth-class. The rates are highest upon first-class mail, and lowest for second-class. Free collections and deliveries have been established in cities, large villages, and in many rural districts, the number of daily deliveries depending upon density of population and the distance from the post office. The mail for rural districts is really delivered from traveling post offices, the former post office being often discontinued. This rural service has resulted in a marked increase of business, and seems to be successful. **Mails, money orders, and free deliveries.**

Valuable letters and packages are registered at the post offices or by mail carriers at the homes on the payment of eight cents besides postage. A record of every registered parcel is kept by each person through whose hands it passes, and, in case of loss, the sender may receive an indemnity not exceeding twenty-five dollars. **Registered mail.**

Both domestic and international money orders are issued at certain offices, at a nominal charge. In 1902, 40,474,327 **Amount of money orders.**

domestic orders were issued and 1,311,111 foreign orders, for a total amount of $336,525,752.

Dead Letter Office.

When the name and address upon a package cannot be deciphered or the mail has not been delivered for other reasons, it is returned directly to the one who sent it, if his name appears upon the letter or parcel; otherwise, through the Dead Letter Office, where it is opened if necessary. The skillful clerks of this office display a wonderful ingenuity in reading addresses that are absolutely meaningless to the ordinary individual.

General defects.

398. Observations on the Postal Service. — With all of its merits, the postal service exhibits many defects. As the department is not organized on a thoroughly satisfactory business basis, unnecessary financial losses are constantly occurring. The appointment of postmasters without special regard to preparations for their duties, and the frequent changes that occur under the present system, are in themselves costly. Abuses are likely to arise in awarding the contracts for carrying the mails, the claim being made that the government pays much more than express companies for similar services.

Second-class mail.

A great amount of discussion has taken place in connection with the rates for second-class mail matter. Since the postage paid on the periodicals coming under this class covers only a small part of the cost incurred in handling them, an earnest attempt has been made to exclude all advertising circulars, books which have claimed to be periodicals, and newspapers whose circulation is almost entirely unpaid. A revision of the law has been proposed, but without result, the enormous deficit for this class of mail being justified on the ground of its educational value.

The third assistant postmaster-general has excluded from the mails a large number of pamphlets and other printed articles that he believes do not come under the head of second-class articles. All matter concerning lotteries or frauds is denied transmission in the mails.

THE DEPARTMENT OF THE INTERIOR

399. Diverse Duties of the Secretary. — "The Interior Department is now, in the variety and importance of the business committed to it, one of the greatest of the executive departments. Perhaps no one of the secretaries, unless it be the Secretary of the Treasury, is so pressed and cumbered with business as the Secretary of the Interior. His work is not single, as in most of the departments, but diverse and multifarious; and only a strong and versatile man can conduct it successfully. The Secretary must pass finally in the department upon questions of patent law, pension law, land law, mining law, the construction of Indian treaties, and many other questions calling for legal knowledge, if the judgment of the Secretary is to be of any value. There is an assistant attorney-general assigned to the department, and the Secretary may call upon the Attorney-general for his opinion upon important matters, but there is hardly an hour in the day that does not present some legal question, and very often the Secretary must sit as an appellate judge, hear arguments and render decisions."[1] **Character and importance.**

400. Indian Affairs are intrusted to a Commissioner who looks after the lands, schools, and moneys of all tribes except those that by former treaties are free to care for their own welfare. Until 1871, the relations with Indian tribes were arranged in treaties which were quite frequently broken. The tribal Indians have since been considered wards of the nation, and have been given certain rights to reservation lands. The government appoints Indian agents who oversee the distribution of funds and the allotment of lands, hear complaints, and have general charge of Indian affairs, great and small. The success of the present system **Government representatives.**

[1] Harrison, *This Country of Ours*, pp. 269–270.

depends to a very great degree upon the character and judgment of these agents, many of whom are conscientious, capable men, although they are often appointed for other reasons than their qualifications. A commission of ten members who devote their time without pay has done much to improve the Indian service by investigating complaints and recommending improvements.

Aid given.

Schools are now supported by the government, aid in the form of food, clothing, cattle, and agricultural implements is regularly given, and the encroachments of mercenary whites is as far as possible prevented. The problems of education and civilization are being dealt with in an honest spirit, and an attempt is being made to solve them by making the Indian a citizen, giving him land of his own, and training him in some suitable line of work.

In 1900 it was estimated that there were 270,544 Indians in the United States, of whom 86,265 lived in Indian Territory. One sixth of these were able to read, and about the same number held land "in severalty." In 1902, 24,434 children received instruction in the government schools, over three and one half million dollars being devoted to this work.

Number and duties.

401. Other Bureaus of the Interior Department. — As all matters pertaining to education are left with the States, the Commissioner of *Education* confines his labors to the gathering of statistical information, the making of reports, and suggestions. His principal aim is to bring about uniformity of the highest grade in the schools of the land. The Commissioner of *Pensions* supervises the administration of the pension laws (§ 308), and examines and passes upon all applications made by claimants for pensions. All interests of the government relating to transcontinental railways, are in charge of the Commissioner of *Railways*. The Director of the *Geological Survey* investigates and reports upon the

character and natural resources of soils within the United States. The administration of the land laws, including surveys of the public domain, the reservations of forest ranges, and the distribution of farms to settlers under the Homestead Act (§§ 298–299) is left with the Commissioner of the *General Land Office.* Finally, the very great task of examining all applications for patents (§ 312) is performed under the direction of the Commissioner of *Patents.*

War, Navy, and Justice

Duties of the Secretary and his assistants.

402. The Secretary of War, although not often a military officer, is the real commander of the army, supervising its organization, equipment, and movements.[1] In this work he acts for the President, who is commander-in-chief, and he is aided by several brigadier-generals, who, collectively, with the commanding general of the army, form the General Staff (§ 303), and, individually, have charge of the different bureaus of the War Department. To the Quartermaster-general is assigned the purchase of most army supplies, except the food, which is under the charge of the Commissary-general, and the arms, artillery, and munitions of war, which are left to the Chief of Ordinance. Other chiefs of bureaus are the Adjutant-general, who promulgates all military orders; the Judge-advocate-general, who is the legal adviser of the Secretary; the Adjutant-general; the Inspector-general; the Surveyor-general; the Paymaster-general; the Chief of Engineers, and the Chief Signal Officer. The principal cares of the Department are the army and the coast defense. The West Point Military Academy is

[1] When large areas within the United States or belonging to it are under military government, as was the case immediately after the Civil War and the Spanish-American War, the Secretary becomes an administrative official of very great influence.

also in its charge (§§ 302, 303, 307). In the performance of actual duties, whether in time of peace or of war, the Secretary usually acts upon his own responsibility except in the most important matters.

Work of the Navy Department.

403. The Secretary of the Navy bears much the same relation to the President as does the Secretary of War, being in fact as well as in theory the head of his department. He is assisted by a General Board, which corresponds in part to the General Staff, although less perfectly organized at the present time (1903). The members of this board are naval officers, and are chiefs of certain bureaus, the other chiefs being also officers of the navy. Perhaps the most important of these bureaus is that of Construction and Repair, which is wholly responsible for the plans of any vessel and the stability of all vessels built under its directions. The number and size of the guns a war ship shall carry and the thickness of the armor for the turrets and exposed parts of the hull, are determined by the Bureau of Ordnance in coöperation with that of Construction and Repair. Each of the other bureaus has a very important and valuable work though of less general interest. The department has charge of a naval observatory at Washington and of the Annapolis Academy (§ 306).

Duties of Attorney-general and assistants.

404. The Department of Justice was not organized as a separate department until 1870, although the Attorney-general has always been a cabinet officer. The direct duties of the Attorney-general and his subordinates are to advise the President and the executive officials regarding legal questions that arise, supervise the actions of the district attorneys and marshals (§ 421), and conduct suits to which the United States is a party when tried in the higher courts. Two solicitors advise the officials of the Treasury in connection with questions involved in the collection of the cus-

toms and internal revenue, another is consulted by the Department of State upon difficult points of international law. Two of the assistant attorneys-general devote all their time to legal questions connected with the Post Office and Interior Departments, the others and the Solicitor-general being concerned with more general duties.

Agriculture and Commerce

General work.

405. The Work of the Department of Agriculture is largely educational in character. By investigations and experiment it seeks to bring before the farmers of the country information regarding soils, grains, fruits, and stock which can be used to improve the results obtained in practical agriculture. During the year 1902, six million copies of a pamphlet dealing with every phase of farm life were distributed, in addition to a vast amount of other literature upon special phases of agriculture. Millions of packages of seeds were sent free of cost to those who could make use of them, the department giving with them information obtained by constant experimentation. The chemistry of soils is carefully considered, and new varieties of vegetables or fruits are being developed. The results of this work are reported to the agricultural colleges maintained in most of the States, the department keeping in constant communication with these schools. An attempt is made, through the Bureau of Forestry, to preserve the timber lands already in existence, and to encourage the cultivation in the different localities of those trees that are particularly adapted to the soil and climate. By working in connection with the General Land Office, this bureau is performing a useful work on the forest reserves (§ 298).

406. Meat Inspection. Weather Reports. — Meats which

Meat Inspection.

are to be sold abroad are carefully inspected to ascertain their exact quality, pork being examined microscopically. Live stock that is exported or imported is usually examined to prevent the shipment or introduction into this country of diseased animals.

Weather Bureau.

The services of the Weather Bureau in forecasting storms and preventing unnecessary loss to growing crops or to coast trade is so well known as to require no comment. There are located at about two hundred stations regular observers, who report twice daily to some central office the metereological conditions in their vicinity. At these central or district offices men are constantly employed comparing the reports and sending out general and local forecasts, which are distributed by mail as quickly as possible. Reports from these district stations are sent to the main office at Washington, where they are in turn compared by experts, who at once send out forecasts to the different stations.

Reports on the conditions of climate and crops are received weekly from about fourteen thousand persons, national and state crop bulletins being issued as soon as convenient afterward.

Various bureaus.

407. The Department of Commerce is composed of a large number of bureaus formerly connected with other departments, especially the Treasury. Among other duties, the heads of these bureaus have charge of the lighthouses and life-saving stations, the survey and inspection of the coasts, the census, and the publication of statistics, in the form of consular reports and statistical abstracts.

Bureaus of Labor, Corporations, and Manufactures.

The Bureau of Labor gathers information from all parts of the country on the hours of labor, the wages paid in different lines of employment, and the general labor conditions in various sections. Corporations which do interstate business are investigated by the Bureau of Corporations, which has

the right to publish any information obtained (§ 287). The aim of the Bureau of Manufactures is to aid American manufacturing industries, especially through the development of foreign and domestic markets, by gathering and publishing information, and "by such other methods and means as may be prescribed by the Secretary, or provided by law."

Census Bureau.

408. The Census Bureau, which had always been temporary until 1902, was transferred from the Department of the Interior. Its chief task consists in gathering, compiling, and publishing every ten years statistics on population, agriculture, vital statistics, and manufactures. This work must be completed within two years. The remaining eight years are devoted to collecting information on special classes, taxation, transportation, and other subjects.

Census employees.

The forces employed in the Census Bureau vary greatly. During June of the census year proper nearly fifty thousand enumerators are engaged under the direction of about three hundred supervisors, who have charge of districts covering, on the average, the same area as a congressional district. Many expert accountants are permanently occupied with the publication of the reports at Washington.

Immigration laws and immigrants.

409. Immigration. — The enforcement of the immigration laws is intrusted to the Commissioner of Immigration. At present all Chinese laborers, idiots, paupers, and persons with contagious diseases or under contract to work in competition with American labor, are excluded from entering the United States. The number of immigrants is nevertheless very large, 648,743 persons being admitted in 1902, and only about one per cent of that number were sent back. The character of the immigrants is unfortunately less satisfactory than two decades ago, and even more stringent laws have been proposed.

Change in character of immigrants.

The number of German immigrants decreased from 109,717 in 1887 to 28,304 in 1902. Great Britain in the same years sent us 182,198 and 45,936 respectively. During the same period the number of inhabitants coming from Austro-Hungary, Russia, and Italy rose from 131,856 to 357,711. While the second generation of these latter peoples will probably be capable of assimilation with Americans, the older immigrants are unable to drop their former customs and habits.

Administration of the immigration laws.

Ships coming from Europe are met by inspectors who make as careful a medical examination as seems necessary. Applicants for admission are taken to the immigration stations and cared for by the government until the officials are satisfied that they do not belong to any of the excluded classes. As the steamship companies are compelled to take back those who are debarred from entering the United States, each transportation line makes some examination of the immigrants before leaving Europe.

410. Miscellaneous Commissions. — In addition to these nine departments, there are two commissions which are not connected with any department. These are the Interstate Commerce Commission (§ 286), and the Civil Service Commission (§ 374). A very useful work is performed by the Congressional Library (§ 313), and by the Public Printing Office. In the latter nearly four thousand persons are employed, making it perhaps the most extensive publishing plant in the world.

Work of the Public Printing Office.

Before 1860, the printing of government publications was done by private parties or contracts. With the establishment of a printing office of its own, the government has increased very greatly the number of its publications. In 1902, 61,240,718 copies of separate documents were published. Among the notable publications of the past are the *Official Records of the War of the Rebellion*, in more than one hundred volumes, undoubtedly the largest set of works ever published, explorations in the South Seas and the West, the various reports of the Geological Surveys, and the volumes on the censuses, that of the eleventh census covering twenty-nine quarto volumes. Each year the office prints not only the records of Congress, but over one hundred separate reports of the executive departments and their bureaus. Of the *Yearbook of the Department of Agriculture* alone, five hundred thousand copies are published.

THE UNITED STATES GOVERNMENT BUILDING, CHICAGO, ILL.

MAIN WAITING ROOM, IMMIGRATION BUILDING, NEW YORK CITY.

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8. The new agriculture. W. S. Harwood, in *Scribner's*, XXXI (1902), pp. 643–660.

9. A day at the Immigration Building. A. Henry, in *Scribner's*, XXIX (1902), pp. 301–311.

10. Work of the Industrial Commission (1898–1901). *Review of Reviews*, XXIV (1901), pp. 711–718.

11. The government as a publisher. A. R. Spofford, in *Forum*, XIX (1895), pp. 338–349.

Practical Questions

1. How many assistant postmasters-general are there? Which one looks after the letting of contracts? free deliveries? appointment of fourth-class postmasters? issuance of stamps? *Congressional Directory*.

2. What rates are charged for each class of mail matter? What would it cost to send a one-ounce letter to Montreal? to the City of Mexico? to Paris? What would it cost to send a five-ounce *parcel* to London? to Berlin? Newspaper Almanacs.

3. Under what class does each of the following come: a photograph? a handkerchief? manuscript of a poem? books in series published monthly? hectograph circulars? a package of seeds? Newspaper Almanacs.

4. Who has charge of river and harbor improvements? of the issuance of patents? of copyrights? of seed distribution? of statistics relating to fisheries? *Congressional Directory*.

CHAPTER XXXIII

THE NATIONAL JUDICIARY

411. The Work of the Judicial Department. — Our national courts have jurisdiction of all cases arising under the Constitution, the national laws, or treaties. For this reason, the Supreme Court is the final interpreter of the Constitution of the United States; that is, it decides what the meaning of any particular clause or section may be. The significance of this statement may not be at once apparent. We must remember that our national government derives all of its authority from the people through the Constitution and the Constitution alone. The Constitution enumerates the general powers to be exercised by the national government, and in doing this, separates the sphere of the States (§ 257) from that of the Nation (§ 235). The boundary line between these two spheres of activity is of necessity somewhat indefinite, but the Supreme Court, as final interpreter of the Constitution, has the power to determine the exact location of this line in regard to any subject brought before it. Moreover it may permit the national government to use "implied powers," which supplement those enumerated in the Constitution, but which do not infringe upon the rights of the States.

Final interpreter of the Constitution.

The Courts and their Methods

412. How the Courts interpret the Constitution. — The courts do not decide the meaning of a section of the Consti-

Through the trial of cases only.

tution by offering opinions at any time, but interpret the Constitution solely in connection with their regular work as courts. When a person feels that he is injured in the execution of a law, his case is brought before a court for trial, and if the meaning of any clause of the Constitution is involved, the court explains the meaning of the clause when it gives its decision in the case. It really decides whether laws passed by Congress are constitutional or not. If, in its opinion, the Congress had a right to pass the law with which the case is concerned, the law is declared constitutional. If Congress has exceeded its powers, the law is set aside as null and void. The Supreme Court to which cases involving the Constitution are appealed, is thus enabled on the one hand to extend the power of Congress within reasonable limits, and to prevent that body from usurping the functions of the other departments of the national government and of the States.

Cases involving the Constitution.

413. Some Rules of Judicial Interpretation. — In deciding whether a law is adverse to the Constitution, the courts are accustomed to observe certain rules and customs. Among these may be mentioned: (1) No important case involving the Constitution is considered except by a full court. (2) No law is declared unconstitutional unless it is clearly in opposition to the Constitution. (3) To find the meaning of a particular clause, the meaning of the Constitution as a whole is usually taken into consideration. (4) Laws which violate general principles of liberty are not on that account declared null and void. (5) Statutes may be held to be unconstitutional in part, the validity of the remainder being affirmed.

Concurrent jurisdiction.

414. The Relation of National to State Courts. — All cases involving state laws only are always tried in state tribunals Cases involving national law are tried usually in national courts, but those dealing with a few subjects, such as postal

matters, may be tried in either state courts or those of the Nation, as the plaintiff may prefer. In these cases the final decision rests with the highest national court. By far the larger number of cases of this kind, which are begun in state courts, deal with state laws supposed to involve the United States Constitution or laws. If the state court decides that the state law is in opposition to national law, its decision is final. If it thinks there is no conflict between the two and that therefore the state law is valid, the case must be carried to the Supreme Court of the United States. In fact in all instances, we may say that when a court of a State decides in favor of the United States laws or Constitution, its decision does not have to be reviewed by the Supreme Court. In this respect, the state courts have been made real parts of the national judiciary, a fact which illustrates the real unity of the national and state systems of government (§§ 261–263).

Cases that may be appealed.

415. National Courts and Judges.—According to the Constitution there shall be one Supreme Court and as many inferior courts as Congress may establish. At present there are four series of courts: the Supreme Court, which always meets in Washington, nine Circuit Courts of Appeals, nine Circuit Courts, and eighty-three District Courts.

Four series of courts. Constitution, Art. III, § 1.

The judges of all these courts are appointed for good behavior by the President with the consent of the Senate. They may be removed only on impeachment in the House of Representatives and conviction by two thirds of the senators. For their services they are paid small salaries which may be increased but not diminished during their term of office. Those who have served at least ten years are permitted to retire at the age of seventy, and continue to draw full pay. Because of the honor connected with the

Term, appointment, and salaries of judges.

judgeships, our national judges have been men of exceptional ability, and our Supreme Court especially has enjoyed a world-wide reputation for wisdom and impartiality.

By a bill approved in February, 1903, the salary of the Chief Justice is fixed at $13,000 per year, that of the associate justices at $12,500, of the circuit judges at $7000, and of the district judges at $6000 each.

Constitution, Art. III, § 2, cl. 1.

416. Jurisdiction of the National Courts. — The Constitution provides for the different kinds of cases that may be tried in United States Courts. "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens or subjects." The eleventh amendment, however, provides that "the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

Constitution, Amend. XI.

The Separate Courts

Composition, sessions, and decisions.

417. The Organization of the Supreme Court. — The Supreme Court consists of one chief justice and eight associate justices, appointed by the President for life. The court holds its regular session in Washington, beginning in

THE SUPREME COURT CHAMBER.

THE STATE, WAR, AND NAVY BUILDING.

October, and the presence of six justices is necessary before a decision is rendered. These decisions are written by the different judges to whom particular cases are assigned by the chief justice after discussion by the different members of the court. The opinion is then read in the presence of the others, a vote is taken, and, if accepted by the majority, it becomes the decision of the court. Dissenting opinions are often given by the minority in suits involving important principles.

Circuit Court duties.

Each justice of the Supreme Court is also assigned to a particular circuit, in which he is obliged by law to hold court at least once in two years. He is likely to be called upon for service in the Circuit Court of Appeals in his circuit, so his position is no sinecure.

The Supreme Court (1789–1903).

Until 1807 the court had but five associate justices. From 1807 to 1837 the number was six; after 1837, eight. In 1863 it was increased to nine; but in 1866, in order to prevent President Johnson from making appointments, it was practically reduced to six. Since 1869 there have been eight associates of the chief justice.

In 1903 the court was composed as follows: —

Justice	Circuit	Appointed
Chief Justice Melville W. Fuller (Ill.)	Fourth	1888
Associate Justice John M. Harlan (Ky.)	Sixth	1877
Associate Justice David J. Brewer (Kan.)	Eighth	1889
Associate Justice Henry B. Brown (Mich.)	Seventh	1890
Associate Justice Edward D. White (La.)	Fifth	1894
Associate Justice Rufus W. Peckham (N. Y.)	Second	1895
Associate Justice Joseph McKenna (Cal.)	Ninth	1898
Associate Justice Oliver W. Holmes (Mass.)	First	1902
Associate Justice Wm. R. Day (Ohio)	Third	1903

Original and appellate jurisdiction.

418. Jurisdiction of the Supreme Court. — The jurisdiction of the Supreme Court is of two kinds, original and appellate. The cases which may be tried originally in the

Constitution, Art. III, § 2, cl. 2.

Supreme Court are those "affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party." The appellate jurisdiction of the court may extend to all other cases, but to do this would lead to a needless increase of its business. Cases which are now appealed may be divided into three classes, according to the courts from which appealed.

(1) Cases from either the District or Circuit Courts are those in which the jurisdiction of the court is in question, final sentences or decrees in prize causes, cases of conviction for capital crimes, those involving the Constitution of the United States or constitutionality of any law, and cases where a state law is said to be in contravention of the United States Constitution. (2) The decision of the Circuit Court of Appeals may be reviewed where the case involves one thousand dollars — except cases between citizens of different States or a citizen and an alien, cases under patent revenue and criminal laws, and cases in admiralty. (3) All cases tried in state courts which may be appealed, as we have just seen (§ 414), are carried directly to the Supreme Court.

Organization and jurisdiction.

419. Circuit Courts of Appeals. — These courts were created in 1891 for the purpose of relieving the Supreme Court of most of its appellate business. There are as many courts as there are circuits, that is nine, and each is composed of three persons, the Supreme Court justice of that circuit and two of the regular circuit judges, or possibly district judges. Any two of these may hold court at any time, but the places are designated by law. All cases appealed from the District or Circuit Courts, and not taken directly to the Supreme Court are reviewed in these courts. The decision of the courts is final in some of these cases, as in those involving criminal, admiralty, revenue, and patent law, but in all others the case may be carried to the Supreme Court, either by appeal or on writ of error.

A defect.

There has already been some complaint that different suits involving similar principles, which cannot be carried higher may be decided in one way by one Circuit Court of Appeals and in another way by

another, so that what is legal in one circuit is illegal in a second. To remedy this difficulty a single court has been suggested to which appeal may be taken in such cases.

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Composition and jurisdiction.

420. Circuit Courts. — For each of the nine circuits either two, three, or four circuit judges are appointed who may hold court separately or together. Before 1891 the courts possessed both original and appellate jurisdiction, but by the judiciary law of that year, when the whole system was reorganized, only original jurisdiction was left. Important civil suits involving two thousand dollars or more which arise under the Constitution, the statutes or the treaties, or which involve the United States, any State or citizens of different States, as well as criminal cases of magnitude, are first tried in these courts, but may be appealed to one of the higher courts.

Judges, attorneys, and marshals.

421. District Courts. — There are at present seventy-one District Courts for the States, besides the five in the organized territories [1] and seven in Alaska and Indian Territory. With three exceptions, each district has a separate United States judge. To each is also assigned a district attorney, who represents the United States in all suits arising in the United States courts held in his district, and a marshal, who executes the decision of the court and who may call out a posse or ask aid from the President in performance of his duties. The jurisdiction of the court is original, and covers a multitude of cases from those of minor importance to the final decision of prize causes.

Task of the court.

422. The Court of Claims. — The court of claims was organized, in 1855, for the purpose of deciding the amount due persons who had a claim of any kind against the national government. It is composed of five judges, who hold sessions at Washington, trying suits brought by indi-

[1] Hawaii and Porto Rico are here treated as organized territories.

viduals for money supposed to be due them by the United States. The court decides on the justice of the claim, and the amount the plaintiff is to receive.

423. Conclusion. — It is fitting that a text-book upon American government should be concluded with an account of our national judiciary. Among our successful political institutions, the most conspicuous is the system of United States courts which has been the special guardian of the Constitution. The Supreme Court, at the apex of this system, represents the highest type of political evolution. A model of fairness, wisdom, and integrity, it is respected at home and honored throughout the entire world. It is a witness to the honesty, earnestness, and intelligence of the American people whom it serves, and a proof that government "of the people, by the people, and for the people, shall not perish from the earth." To its high standard our other governments may be unable to attain, but it will continue to be their model, and its standard will remain the ideal of the American citizen. Decade by decade it has developed in the people a more perfect type of public morality; and in the coming years, the lessons it has taught that true patriotism is not selfish nor sectional, and that national success must depend upon our recognition of the eternal principles of Justice, will bring the Nation to a higher level of civic righteousness. Then, with even greater pride than we feel to-day, may each one of us utter our proud boast — "I AM AN AMERICAN CITIZEN."

General References

Ashley, *The American Federal State*, §§ 374–388.
Hinsdale, *The American Government*, §§ 525–545, 570–577.
Bryce, *The American Commonwealth*, abridged ed., pp. 167–200.

Harrison, *This Country of Ours*, pp. 300–330.

Cooley, *Principles of Constitutional Law*, pp. 111–147.

D. J. Brewer, "The Supreme Court," in *Scribner's Magazine*, XXXIII (1903), pp. 273–284.

Willoughby, *The Supreme Court.*

Topic

THE COURTS AND THE CONSTITUTION: Hinsdale, *American Government*, §§ 570–577; Bryce, *American Commonwealth*, abridged ed., pp. 178–187; A. Johnston, in Lalor's *Cyclopædia*, II, pp. 647–652; C. B. Elliott, in *Political Science Quarterly*, V (1890), pp. 224–258.

Studies

1. General character of the national courts. Ashley, *American Federal State*, §§. 374–382, 404–406.

2. The workings of the courts. Bryce, *American Commonwealth*, abridged ed., pp. 188–200.

3. The Supreme Court and political questions. Harrison, *This Country of Ours*, pp. 303–313.

4. The influence of Chief Justice Marshall. Magruder, *Life of John Marshall*, Chapter X.

5. The influence of Supreme Court decisions (historical). D. J. Brewer, in *Scribner's*, XXXIII (1903), pp. 275–283.

6. Should the national judges be elected for terms of a definite length?

Practical Questions

1. Name a fairly recent case in which a law of Congress was held by the Supreme Court to be unconstitutional. On what grounds? By what members of the court?

2. Why does not the eleventh amendment prohibit citizens from suing their own State? Cf. Constitution, Art. III, § 2, cl. 1.

3. In what circuit do we live? What States are included in it? Who is the Supreme Court justice for this circuit? What circuit judges are there?

4. What are the limits of this district? Where is the court held? Give the names of the district judge, the district attorney, and the marshal.

APPENDIX

A. CONSTITUTION OF THE UNITED STATES

PREAMBLE. Objects of the Constitution.

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE. I.

CONGRESS. Two houses.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

House of Representatives. Term and election.

Section 2. [1] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Qualifications—age, citizenship, residence.

[2] No Person shall be a Representative who shall not have attained to the age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Method of apportioning representatives. (Part in brackets superseded by Sec. 2 of Amendment XIV.) Census.

[3] [Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall

not exceed one for every thirty Thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Temporary apportionment.

[4] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

Vacancies

[5] The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Officers.

Section 3. [1] The Senate of the United States shall be composed of two Senators from each State, chosen by the ~~Legislature thereof~~, for six Years; and each Senator shall have one Vote.

Senate. Election and term.

[2] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

Division of Senators into three classes.

Vacancies.

[3] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

Qualifications — age, citizenship, residence.

[4] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

Vice-president.

[5] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

Officers.

[6] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried,

Trial of impeachments.

the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in cases of impeachment.

[7] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Both Houses.

Times, places, and method of electing members.

Section 4. [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Time of meeting.

[2] The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Membership regulations. Quorum.

Section 5. [1] Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Rules of each house.

[2] Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Journals.

[3] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Special adjournments.

[4] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Members.

Compensation and privileges of members.

Section 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for

any Speech or Debate in either House, they shall not be questioned in any other Place.

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office. **Disabilities of members.**

Section 7. [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills. ***Bills and resolutions.*** **Revenue bills.**

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law. **Veto of President on bills.**

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill. **Veto on resolutions.**

Section 8. The Congress shall have Power [1] To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and ***Powers of Congress.***

Taxation.

provide for the common Defence and general Welfare of the United States; but all duties, Imposts and Excises shall be uniform throughout the United States;

Borrowing.

[2] To borrow Money on the credit of the United States;

Regulating commerce.

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Naturalization and bankruptcy.

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

Coins, weights, and measures.

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Counterfeiting.

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

Post offices.

[7] To establish Post Offices and post Roads;

Patents and copyrights.

[8] To promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Inferior courts.

[9] To constitute Tribunals inferior to the supreme Court;

Piracies.

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

War.

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

Army.

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Navy.

[13] To provide and maintain a Navy;

Land and naval forces.

[14] To make Rules for the Government and Regulation of the land and naval Forces;

Militia, in service.

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Militia, organization.

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.

Seat of government, and stations.

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the

Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; — And

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Supplementary legislation.

Section 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Limitations on powers of Congress.

Slave trade.

[2] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Habeas corpus.

[3] No Bill of Attainder or ex post facto Law shall be passed.

Bills of attainder and ex post facto laws.

[4] No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken.

Direct tax.

[5] No Tax or Duty shall be laid on Articles exported from any State.

Tax on exports.

[6] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

Uniform commercial regulations.

[7] No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Finance.

[8] No title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Titles of nobility and presents.

Limitations on powers of States.

Section 10. [1] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin

Specific prohibitions.

Money; emit Bills of Credit, make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the obligation of Contracts, or grant any Title of Nobility.

Limitations on imposts.

[2] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

Prohibitions removable with consent of Congress.

[3] No State shall, without the Consent of Congress, lay any Duty of tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article. II.

President. Term. Presidential electors and method of choosing President.

Section 1. [1] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same term, be elected, as follows:

(Part in brackets superseded by XII amendment.)

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. [The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than

one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]

Dates of elections.

[3] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

Qualifications, citizenship, age, and residence.

[4] No Person except a natural born Citizen, or a citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

Presidential succession.

[5] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

Compensation.

[6] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Oath of office.

[7] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: — "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Powers of President.

Section 2. [1] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Military, supervisory, and judicial.

In treaties and in appointments.

[2] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Temporary appointments.

[3] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Legislative powers.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Liability to impeachment.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE. III.

JUDICIARY. Courts.

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the

Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Judges: term and compensation.

Section 2. [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all cases affecting Ambassadors, other public Ministers and Consuls; — to all cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a party; — to controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or subjects.

Jurisdiction.

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Original and appellate jurisdiction of Supreme Court.

[3] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Jury trial. Place of trial.

Section 3. [1] Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

Treason: definition,

[2] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

punishment.

Article. IV.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every

Nation and States.

Interstate comity.

other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Interstate citizenship.

Section 2. [1] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Extradition of criminals.

[2] A Person charged in any State with Treason, Felony or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Fugitive slaves.

[3] No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Admission of new States.

Section 3. [1] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Government of national territory.

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Protection of States.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

Amendment of Constitution.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes as Part of

this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article. VI.

MISCELLANEOUS. Preëxisting national debt.

[1] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Supremacy of Constitution, treaties, and national law.

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Oaths of national and state officials.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII.

RATIFICATION.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our Names,

G°. Washington—
Presidt. and Deputy from Virginia

[and thirty eight members from all the States except Rhode Island.]

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I[1]]

Prohibitions on Congress respecting religion, speech, and the press.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[ARTICLE II[1]]

Right to bear arms.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[ARTICLE III[1]]

Quartering of soldiers.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

[ARTICLE IV[1]]

Right of search.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[ARTICLE V[1]]

Protection of accused in criminal cases.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand

[1] First ten amendments proposed by Congress, Sept. 25, 1789. Proclaimed to be in force Dec. 15, 1791.

Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[ARTICLE VI[1]]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Rights of accused regarding trial.

[ARTICLE VII[1]]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Jury trial in lawsuits.

[ARTICLE VIII[1]]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Bail and punishment.

[ARTICLE IX[1]]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Unenumerated rights.

[ARTICLE X[1]]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Undelegated powers.

[1] First ten amendments proposed by Congress, Sept. 25, 1789. Proclaimed to be in force Dec. 15, 1791.

Article XI[1]

Exemption of States from suit.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Article XII

New method of electing President.

(To supersede part of Art. II, Sec. I, cl. 2.)

(Proposed Dec. 12, 1803. Declared in force Sept. 25, 1804.)

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two

[1] Proposed September 5, 1794. Declared in force January 8, 1798.

highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Article XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Abolition of slavery. (Proposed Feb. 1, 1865. Declared in force Dec. 18, 1865.)

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Article XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Citizens of the United States — protection of. (Proposed June 16, 1866. Declared in force July 28, 1868.)

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

New basis of representation in Congress. (Superseding part of Art. I, sec. 2, cl. 3.)

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any

Disabilities of officials engaged in rebellion.

office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by two-thirds vote of each House, remove such disability.

Validity of war debt.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Article XV[1]

Voting rights of citizens of the U. S.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

[1] Proposed February 27, 1869. Declared in force March 30, 1870.

XVI. Income Tax.
XVII Election of Senators
XVIII Prohibition
XIX Women's Suffrage.

B. — Area and Population of the States

State	Became Member of Union	Land Area Square Miles	Population		Electoral Vote	
			1890	1900	1892	1902
Alabama . . .	1819	52,250	1,513,017	1,828,697	11	11
Arkansas . . .	1836	53,850	1,128,179	1,311,564	8	9
California . .	1850	158,360	1,208,130	1,485,053	9	10
Colorado . . .	1876	103,925	412,198	539,700	4	5
Connecticut . .	1788	4,990	746,258	908,355	6	7
Delaware . . .	1787	2,050	168,493	184,735	3	3
Florida . . .	1845	58,680	391,422	528,542	4	5
Georgia . . .	1788	59,475	1,837,353	2,216,331	13	13
Idaho	1890	84,800	84,385	161,772	3	3
Illinois	1818	56,650	3,826,351	4,821,550	24	27
Indiana . . .	1816	36,350	2,192,404	2,516,462	15	15
Iowa	1846	56,025	1,911,896	2,231,853	13	13
Kansas . . .	1861	82,080	1,427,096	1,470,495	10	10
Kentucky . .	1792	40,400	1,858,635	2,147,174	13	13
Louisiana . .	1812	48,720	1,118,587	1,381,625	8	9
Maine	1820	33,040	661,086	694,466	6	6
Maryland . . .	1788	12,210	1,042,390	1,190,050	8	8
Massachusetts .	1788	8,315	2,238,943	2,805,346	15	16
Michigan . . .	1837	48,915	2,093,889	2,420,982	14	14
Minnesota . .	1858	83,365	1,301,826	1,751,394	9	11
Mississippi . .	1817	46,810	1,289,600	1,551,270	9	10
Missouri . . .	1821	69,415	2,679,184	3,106,665	17	18
Montana . . .	1889	146,080	132,159	243,329	3	3
Nebraska . . .	1867	77,510	1,058,910	1,068,539	8	8
Nevada . . .	1864	110,700	45,761	42,335	3	3
New Hampshire	1788	9,305	376,530	411,588	4	4
New Jersey . .	1787	7,815	1,444,933	1,883,669	10	12
New York . .	1788	49,170	5,997,853	7,268,012	36	39
North Carolina .	1789	52,250	1,617,947	1,893,810	11	11
North Dakota .	1889	70,795	182,719	319,146	3	4
Ohio	1803	41,060	3,672,316	4,157,545	23	23
Oregon . . .	1859	96,030	313,767	413,536	4	4
Pennsylvania .	1787	45,215	5,258,014	6,302,115	32	34
Rhode Island .	1790	1,250	345,506	428,556	4	4
South Carolina .	1788	30,570	1,151,149	1,340,316	9	9
South Dakota .	1889	77,650	328,808	401,570	4	4
Tennessee . .	1796	42,050	1,767,518	2,020,616	12	12
Texas	1845	265,780	2,235,523	3,048,710	15	18
Utah	1896	84,970	207,905	276,749	—	3
Vermont . . .	1791	9,565	332,422	343,641	4	4
Virginia . . .	1788	42,450	1,655,980	1,854,184	12	12
Washington . .	1889	69,180	349,390	518,103	4	5
West Virginia .	1863	24,780	762,794	958,800	6	7
Wisconsin . .	1848	56,040	1,686,880	2,069,042	12	13
Wyoming . .	1890	97,890	60,705	92,531	3	3
Total States .	——	2,784,677	62,116,811	74,610,523	444	476

Territory	Area Square Miles	Population	
		1890	1900
Alaska	577,390	32,052	63,441
Arizona	113,020	59,620	122,931
District of Columbia	70	230,392	278,718
Hawaii	6,740	89,990	154,001
Indian Territory	31,400	180,182	391,960
Oklahoma	39,030	61,834	398,245
New Mexico	122,580	153,593	195,310
Philippines	114,000	——	6,961,339
Porto Rico	3,600	——	953,243

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